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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 193

ELINOR DORRANCE HILL, APPELLANT,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY, ET AL., ETC.

No. 194

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M. D., ARTHUR C. DORRANCE, ET AL., ETC., APPELLANTS,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED JULY 1, 1935.

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IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity

E-5092

ELINOR DORRANCE HILL

vs.

J. H. THAYER MARTIN, State Tax Commissioner of State of New Jersey, WILLIAM D. KELLY, State Supervisor, Inheritance Tax Bureau of State of New Jersey, FRANK J. MURRAY, Comptroller of State of New Jersey, WILLIAM H. ALBRIGHT, State Treasurer of State of New Jersey and DAVID T. WILENTZ, Attorney General of State of New Jersey.

DOCKET ENTRIES

1935

April 1. Bill of Complaint filed.
April 1. Subpœna issued.
April 1. Affidavit of Charlotte Dorrance Wright, filed.
April 1. Affidavit of George Morris Dorrance, M. D., filed.
April 1. Motion for Temporary Restraining Order filed.
April 2. Order for Temporary Restraining Order filed.
April 2. Bond filed.
April 3. Subpœna returned, Served March 2nd, filed.
April 3. Affidavits of Serving Bill of Complaint filed.
April 5. Notices of Pendency of suit and hearing with service thereon filed (6).
April 10. Amended Bill of Complaint filed.
April 12. Answer filed.
April 12. Amendment to Answer filed.
April 12. Answering Affidavit of William D. Kelly filed.
April 12. Hearing Statutory Court. Ordered Wm. E. Schnader admitted Pro hac vice. Decision Reserved. (Judges Wooley, Davis & Avis.)
April 12. Supplemental Injunction Affidavit filed.
April 20. Reply Affidavits filed.
June 3. Memorandum filed (Judges Woolley and Davis, Cir. Judges and Avis, D. J.)

[fol. 2]

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June 4. Order Denying Interlocutory Injunction, filed.
June 4. Assignment of Errors, filed.
June 4. Petition of Appeal and Order Allowing Appeal, filed.
June 4. Motion for Injunction Pending Determination of Appeal and Order Granting same, filed.
June 5. Appeal Bond filed.
June 5. Injunction Bond filed.
June 6. Citation issued and filed June 7.
June 7. Statement as to Jurisdiction of Supreme Court, filed.
June 7. Injunction issued.
June 12. Acceptance of Service filed.
June 13. Writ of Injunction returned, served June 6, filed.
June 15. Appellee's Statement in Answer to Appellant's Statement as to Jurisdiction, filed.
June 16. Appellant's Præcipe for Record, filed.
June 25. Appellee's Præcipe for Record, filed.
June 27. Appellant's Objection to Incorporation in Record of matter specified in Appellee's Præcipe, filed.
June 27. Order as to Incorporation in Record of Portions of Matter specified in Appellee's Præcipe, filed.
June 29. Certified Copy of Transcript on Appeal sent to Clerk of U. S. Supreme Court.

[fols. 3 & 4] IN UNITED STATES DISTRICT COURT

No. 5092. In Equity.

[Title omitted]

AMENDED BILL OF COMPLAINT—Filed April 10, 1935

To the Honorable the Judges of the said Court:

Plaintiff, Elinor Dorrance Hill, in this her amended bill of complaint against J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, William D. Kelly, State Supervisor, Inheritance Tax Bureau, of said State, Frank J. Murray, Comptroller of said State, William H.

Albright, State Treasurer of said State, and David T. Wilentz, Attorney General of said State, complains and says:

1. Plaintiff, Elinor Dorrance Hill, wife of Nathaniel Hill, is a citizen of the United States, and a resident of the city of Newport, State of Rhode Island.

[fol. 5] 2. Defendant J. H. Thayer Martin is the only qualified Tax Commissioner of the State of New Jersey; and is a citizen of the United States, and a resident of Woodbridge, State of New Jersey, and District of New Jersey.

Defendant William D. Kelly is the duly qualified State Supervisor, Inheritance Tax Bureau, of the State of New Jersey and is a citizen of the United States, and a resident of Trenton, State of New Jersey, and District of New Jersey.

Defendant Frank J. Murray is the duly qualified Comptroller of the State of New Jersey; and is a citiezn of the United States, and a resident of Orange, State of New Jersey, and District of New Jersey.

Defendant William H. Albright is the duly qualified State Treasurer of the State of New Jersey and is a citizen of the United States, and a resident of Woodbury, State of New Jersey, and District of New Jersey.

Defendant David T. Wilentz is the duly qualified Attorney General of the State of New Jersey; and is a citizen of the United States, and a resident of Perth Amboy, State of New Jersey, and District of New Jersey.

3. All of the defendants are clothed, under the laws of the State of New Jersey, with duties in the assessment and collection of transfer inheritance taxes.

4. The matter in controversy in this proceeding exceeds, exclusive of interest and costs, the sum or value of $3000, arises under the Constitution of the United States, and is between citizens of different States.

5. Plaintiff is a daughter of John T. Dorrance, deceased, hereinafter in this bill called "decedent", who died at Cinnaminson, New Jersey, on September 21, 1930, and was buried in West Laurel Hill Cemetery, in Philadelphia, Pennsylvania.

[fol. 6] 6. Said John T. Dorrance left a will in which he appointed as the executors thereof, Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance, and Camden Safe Deposit and Trust Company, hereinafter in this bill called "executors". Said will was probated on October 2, 1930, in the office of the Surrogate of Burlington County, New Jersey and letters testamentary were issued thereon to executors.

7. By his will decedent provided that all State and Federal inheritance taxes should be paid out of the principal of his estate, but that, subject to certain annual payments to his widow and children, the income should be accumulated for such period, not exceeding sixteen years, as would be necessary to repay to principal the amount of such State and Federal inheritance taxes; and that when such repayment has been made, or at the end of sixteen years, the principal of the Estate shall be divided into eight shares, the income of one of which shall be paid to plaintiff for life.

8. Under said provisions of decedent's will, plaintiff's annual income will be materially increased as soon as the principal of the estate is divided into shares. The injury to decedent's estate resulting from the matters hereinafter in this bill set forth, and particularly, the illegal collection by defendants of transfer inheritance tax upon the intangible personal property in decedent's estate, will deprive the plaintiff of income greatly exceeding $3000.

9. On April 23, 1933, because of the judgment of the Supreme Court of Pennsylvania, that decedent was at the time of his death a resident of Pennsylvania, executors filed with the Surrogate of Burlington County, New Jersey, a petition praying him to revoke his order of October 2, 1930, admitting decedent's will to probate and granting letters testamentary to executors. No action has as yet been taken on that petition.

[fol. 7] 10. On May 12, 1933, defendant Martin, State Tax Commissioner of the State of New Jersey, filed in the Burlington County Orphans Court of Burlington County, New Jersey, a petition praying the court to remove executors and to appoint in their stead as executors and trustees under decedent's will, the State Treasurer of New Jersey. No action has as yet been taken on that petition.

11. Plaintiff is advised by counsel and therefore avers that because of the question raised by executors regarding the validity of their appointment and the effort of the defendant Martin to have an officer of the State of New Jersey appointed as executor of decedent's will, she has an independent right at this time to maintain this action to prevent the defendants from taking her property without due process of law.

12. Decedent was born at Bristol, Pennsylvania, on November 11, 1873, and, until he was 23 years of age lived in Pennsylvania except when in attendance at college and university. At that age he entered the employ of Joseph Campbell Preserve Company, of Camden, New Jersey, and resided in Camden.

13. Decedent was married on August 18, 1906. He and his wife lived in Camden, New Jersey, until the latter part of the year 1907, when they moved to Philadelphia, Pennasylvania. They resided in Philadelphia until 1911, when they established their home at Cinnaminson, New Jersey, in a property owned by and leased from Campbell Soup Company, and known as "Pomona Farms."

14. In 1911, decedent was an officer of Campbell Soup Company, of Camden, N. J., and in 1915, he became its president. At his death he was the owner of all of the shares of capital stock of that company.

[fol. 8] 15. Decedent was survived by his wife and by five children, born, respectively, in 1907, 1909, 1911, 1915 and 1919.

16. In April 1925, decedent purchased a residental property known as "Woodcrest", at Radnor, Delaware County, Pennsylvania, and took title thereto in the name of himself and his wife as tenants by the entireties. The property consisted of 119 acres, and the purchase price paid by decedent was $350,000. It was located in the finest residential section in the suburbs of Philadephia. To prepare the property for occupancy, decedent expended an amount exceeding the purchase price.

17. On November 14, 1925, decedent removed his wearing apparel, his personal effects, his library, and the wearing apparel and other personal effects of his wife and children from Cinnaminson, New Jersey, to "Woodcrest",

Radnor, Pennsylvania, and there established his dwelling place and family home, without any present intention of changing it to any other place.

18. On November 14, 1925, decedent was physically present at his new dwelling place in Radnor, Pennsylvania, with the intention of making it his home and without any present intention of not residing there indefinitely.

19. Decedent was unwilling to pay the Pennsylvania four-mill tax upon his shares of capital stock of Campbell Soup Company, as he was required to do by the Pennsylvania Act of June 17, 1913, P. L. 507, its amendments and supplements. For this reason he desired to retain a "legal residence" in New Jersey, and in an effort to do so, notwithstanding the removal of his family home to Pennsylvania and the absence of any present intention not to reside [fol. 9] there indefinitely, he continued to lease from Campbell Soup Company, "Pomona Farms" at Cinnaminson, New Jersey; occasionally, with his wife, he spent a night there; he continued to vote and pay a small personal property tax at Cinnaminson; he retained his membership in the vestry of a church at Riverton, New Jersey; and he made many declarations, including a statement in his will, that he was a resident of the State of New Jersey. Subsequent to decedent's death, tax in an amount exceeding $1,000,000 was paid by decedent's estate to Delaware County, Pennsylvania, for the years 1925 to1930 inclusive, as required by said Act.

20. After changing his abode to "Woodcrest", decedent spent substantially all of his time there, except when he was at business during the day and when he was in New England on summer vacations or in Europe.

21. Decedent did not spend a night at Cinnaminson between November 14, 1925 and February 12, 1926. During the entire year 1926, decedent spent only 11 nights at Cinnamison. He spent January 10, 1927 and February 10, 1927, at Cinnaminson, and then during the seventeen-month period beginning February 11, 1927, and ending July 16, 1928, he did not spend a single night at Cinnaminson. Thereafter, except when his family and all of the "Woodcrest" household servants were in New England on summer vacation, decedent, prior to his fatal illness, spent only 8 nights at Cinnaminson. Continuously, from No-

vember 14, 1925 to the date of his fatal illness, decedent lived with his family at "Woodcrest".

22. At no time between November 14, 1925, and the date of his fatal illness in September, 1930, did decedent and [fol. 10] his family ever assemble at Cinnaminson, New Jersey, for any purpose, nor did decedent, at any time during that period reside with his family at Cinnaminson or any other place in New Jersey, or otherwise treat the Cinnaminson residence as his home and the home of his family.

23. During the period between November 14, 1925, and decedent's death, decedent's wife and family attended church at Radnor, his children attended school in Pennsylvania, a daughter was married at Radnor, and all social functions given by decedent and the members of his family, were at "Woodcrest," Radnor, Pennsylvania.

24. During said period, except when he was in Europe or his family was in New England for the summer, decedent spent his week-ends at "Woodcrest" with his family. Thanksgiving day, Christmas day, and all other holidays were celebrated by decedent and his family at "Woodcrest." Whenever decedent went to Europe he left from and returned to "Woodcrest"; and when decedent's family went to New England for the summer vacation, its luggage was shipped from and returned to Radnor. In the summers of 1926 and 1927, "Woodcrest" was kept open while decedent's family was in New England, and decedent lived at "Woodcrest."

25. On June 30, 1928, decedent purchased additional ground adjoining "Woodcrest," consisting of 8.22 acres, at a cost of $52,500; and on July 27, 1929, another 10 acres at a cost of $60,000.

26. In August 1926, decedent's mother and sister, both of whom were ill, moved into "Pomona Farms", Cinnaminson, New Jersey, and lived there until they died—decedent's sister in the summer of 1928, and his mother early in 1929.

[fol. 11] 27. Prior to 1925, the cost per annum of operating "Pomona Farms", as the decedent's home was between $20,000 and $30,000 per annum. After the decedent and his family moved to "Woodcrest", the cost of main-

taining "Pomona Farms", even though decedent's mother and sister lived there while ill, became less each year. The expenditures for that purpose for 1927 were $10,344.29; for 1928, $8,373.89; for 1929, $6,459.90; and for the first nine months of 1930, $4,200.17. The cost of operating "Woodcrest" was more than $90,000 per annum for 1926 and 1927, and at the same rate per annum for the years 1928, 1929, and 1930, except in the summer when the household servants were taken to Bar Harbor.

28. Before the occupancy of "Woodcrest", 10 servants were employed at "Pomona Farms"; but after November 14, 1925, never more than 4. At "Woodcrest", the number of house servants was originally 13, but later 16; and in addition there were always 10 to 12 outside employees.

29. In 1930, decedent and his family had been spending their summer vacation at Bar Harbor, Maine. All of the family servants were taken to Bar Harbor, and the family home at Radnor was not occupied during the summer. Decedent left Bar Harbor on September 15, 1930 and went to Cinnaminson, intending to stay there until the servants had arrived at "Woodcrest" and prepared it for occupancy. He suffered a stroke at Cinnaminson and died five days later. At the date of his death he was domiciled in Pennsylvania.

30. At the date of his death, and for some years prior thereto, decedent owned intangible personal property of the value of more than $100,000,000.

[fol. 12] 31. On April 21, 1931, the Register of Wills of Delaware County, Pennsylvania, made an appraisement against the estate of decedent as a resident of said county, fixing the value of decedent's taxable personal property, including all of his intangible personal property, at $199,990,000, upon which the total transfer inheritance tax due to the Commonwealth was assessed at $31,465,200. Said appraisement was made under authority of the Pennsylvania Acts of June 20, 1919, P. L. 521, May 7, 1927, P. L. 859, and May 16, 1929, P. L. 1782. On May 2, 1931, executors through their counsel notified defendant Kelly, State Supervisor, Inheritance Tax Bureau, State of New Jersey, of the Pennsylvania assessment, and suggested that the State of New Jersey should intervene in the proceedings in Pennsylvania, and be represented therein.

32. On May 18, 1931, executors appealed from the assessment made by the Register of Wills of Delaware County, Pennsylvania, to the Orphans Court of Delaware County, Pennsylvania, and perfected their appeal by filing their bond in the amount fixed by the Court, conditioned for the payment of any tax which might be found due and payable.

33. On October 19, 1931, the Orphans Court of Delaware County, Pennsylvania, proceeded to take testimony on the appeal from the assessment made by the Register of Wills of that County, as aforesaid. Among the witnesses who testified, was defendant Kelly. On February 15, 1932, the Orphans Court sustained the appeal and set aside the assessment.

34. From the decision of the Orphans Court of Delaware County, the Commonwealth of Pennsylvania took an appeal to the Supreme Court of Pennsylvania; and the latter court on September 26, 1932, holding that decedent was domiciled in Pennsylvania on the date of his death, re-[fol. 13] versed the Orphans Court of Delaware County and reinstated, in a modified amount, the assessment made by the Register of Wills.

35. Executors filed a petition in the Supreme Court of the United States for a writ of certiorari to the Supreme Court of Pennsylvania, which was denied on December 5, 1932, because a federal question was not properly presented to, and was not passed upon by the Supreme Court of Pennsylvania. Thereafter executors applied to the Supreme Court of Pennsylvania for a reargument upon which they filed a brief presenting the federal question, and after that court's refusal to reconsider its decision, filed a second petition in the Supreme Court of the United States for a writ of certiorari which was refused on March 13, 1933.

36. While executors' petition to the United States Supreme Court for a writ of certiorari was pending, the State of New Jerssy asked leave of that court to intervene, and executors filed their formal consent to such intervention; but leave was denied. However, leave was granted to the State of New Jersey to file a brief as amicus curiæ; and on November 23, 1932, the Attorney General of New Jersey filed a brief pursuant to the leave granted.

37. On March 27, 1933, the Supreme Court of Pennsylvania entered judgment in the aforesaid case in favor of

the Commonwealth of Pennsylvania and against executors for transfer inheritance tax in the amount of $14,394,698.88, subject to an additional assessment and imposition of tax if and when the final determination of the amount of the Federal estate tax upon decedent's estate should disclose that 80 per centum thereof exceeds $14,394,698.88. The judgment included a tax upon the transfer of all of decedent's intangible personal property.

[fol. 14] On March 29, 1933, a like judgment was entered against executors in the Orphans Court of Delaware County, Pennsylvania, which judgment was final and conclusive upon executors.

38. Because of said judgment, executors were compelled to pay to the Commonwealth of Pennsylvania transfer inheritance tax in the amount of $14,394,698.88, with interest amounting to $104,278.03. They made payment on March 31, 1933. On the same date they gave their bond to the Commonwealth of Pennsylvania in the amount of $4,000,000, conditioned upon the payment of any additional tax which might become due under the said judgment.

39. On October 17, 1931, the State Tax Commissioner of New Jersey, purporting to act under authority conferred upon him by the New Jersey Transfer Inheritance Tax Act of April 20, 1909, ch. 228, its amendments and supplements, made an assessment of transfer inheritance tax against decedent's estate in the sum of $12,247,333.52, with an additional assessment in the sum of $4,521,143.90 on account of certain contingent remainders. Said assessment included tax upon the transfer of all decedent's intangible personal property.

40. Pending the decision of the Orphans Court of Delaware County, Pennsylvania, the defendant State Tax Commissioner of New Jersey on December 12, 1931, opened the assessments made by him on October 17, 1931, as aforesaid, for the purpose of permitting executors to submit to him additional information regarding decedent's domicile.

41. On October 10, 1932, after the entire record in the Pennsylvania case, including the judgment of the Supreme Court of Pennsylvania was offered in evidence before him, without objection on the part of the defendants

[fol. 15] or any of them, defendant, the State Tax Commissioner of New Jersey, made an assessment of transfer inheritance tax against the decedent's estate in the amount of $12,247,333.52, with interest at the rate of 10 per cent. per annum from September 21, 1931. The Pennsylvania judgment established that decedent was domiciled in Pennsylvania at the time of his death. Said assessment included tax upon the transfer of certain of decedent's tangible personal property and upon all of decedent's intangible personal property, and included a specific assessment against plaintiff's life interest in decedent's estate in the amount of $1,566,925.01.

42. On December 9, 1932, executors appealed from the New Jersey assessment of transfer inheritance tax to the Ordinary of the State of New Jersey; and after hearing the appeal the Ordinary entered a decree in the New Jersey Prerogative Court on May 11, 1934, sustaining the Tax Commissioner's assessment of October 10, 1932. In its decree the said court refused to give full faith and credit to the judgment of the Supreme Court of Pennsylvania, and, upon the same evidence, stated conclusions at variance with those of the Supreme Court of Pennsylvania.

43. From the decree of the Prerogative Court, executors obtained a writ of certiorari from the Supreme Court of the State of New Jersey, which on February 11, 1935, sustained the decree of the Prerogative Court. The action of the Supreme Court is not final, being subject to judicial review by the Court of Errors and Appeals. And the tax which defendants demand cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or a statutory proceeding in the Prerogative Court of New Jersey.

[fol. 16] 44. When the defendant Martin, State Tax Commissioner, made his assessment of $12,247,333.52 against executors, and when the assessment had been sustained by the Prerogative Court, the administrative procedure provided by the New Jersey Inheritance Tax Act of April 20, 1909, ch. 228, was at an end; but under the Constitution and laws of New Jersey, the Supreme Court of New Jersey on certiorari is authorized to review the facts as well as the law, to take additional testimony and to affirm, reverse or modify the assessment made by the State Tax Commis-

sioner, thus rendering the action of that court administrative and not judicial.

45. Defendants threaten to collect from executors the transfer inheritance tax assessed against decedent's estate by the defendant State Tax Commissioner. The assessment includes a tax on the intangible personal property of decedent's estate, and is unconstitutional for the reasons set forth in this Bill of Complaint.

46. By the New Jersey Act of July 11, 1934, ch, 249, the State Tax Commissioner was authorized "to adjust and settle transfer inheritance taxes due the State, where the matter is now in litigation and the question of the domicile of decedent is at issue and has been adjudged against the estate of decedent both in this State and in another State, by the acceptance of the principal sum due and the remission of all interest due on such principal sum."

47. On February 13, 1935, executors by their counsel notified defendant Martin through his counsel, that executors intend to take an appeal to the New Jersey Court of Errors and Appeals from the action of the Supreme Court of New Jersey. On February 15, 1935, defendant Martin [fol. 17] addressed to executors a letter, a copy of which marked "Exhibit A" is attached hereto and made a part hereof, notifying them of his intention to refuse any relief in interest charges to decedent's estate, if executors prosecuted any further, in the courts of New Jersey, litigation contesting the validity of the tax defendants threaten to collect. Thus, an appeal by executors, from the judgment of the Supreme Court of New Jersey to the Court of Errors and Appeals, will cost decedent's estate upwards of $4,000,000, if the assessment against decedent's estate should be sustained. Under the statutes of New Jersey, executors may take their appeal to the Court of Errors and Appeals at any time prior to February 11, 1936. Executors will take such appeal prior to that date, unless in the meantime this action renders such appeal unnecessary.

48. Because of defendants' threat to collect from decedent's estate, a transfer inheritance tax, as aforesaid, executors are compelled to maintain a large cash reserve at a low rate of interest, and have been and are being prevented from selling, pledging, transferring, or otherwise utilizing personal property of decedent's estate of the ap-

praised value of more than $81,000,000, as appears more fully by a statement of the following facts:

On July 1, 1933, New Jersey State road bonds belonging to decedent's estate in the amount of $1,665,000, matured. Defendant Martin, State Tax Commissioner of New Jersey, and defendant Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey, refused to issue waivers to executors releasing the maturing bonds, unless and until executors placed in escrow other New Jersey bonds of an equal par value, conditioned upon the payment of inheritance tax by executors, if such tax be found due and owing. Thereupon executors placed in escrow other New [fol. 18] Jersey bonds of the par value of $1,665,000, appraised at $1,738,360.

On June 26, 1934, in order to avoid, for the time being, the posting of a bond, in the amount of upwards of $24,000,000, executors placed in escrow, conditioned upon the payment of inheritance tax by executors, if such tax be found due and owing, all of the preferred stock of Campbell Soup Company, of the appraised value of $12,360,000.

Executors hold, in addition, personal property belonging to decedent's estate of the appraised value of more than $67,000,000, which cannot be sold, pledged, transferred or otherwise utilized unless and until waivers have been issued by the State Tax Commissioner of New Jersey and State Supervisor, Inheritance Tax Bureau, of New Jersey. Said officers have refused to issue such waivers.

49. Notwithstanding the deposit of collateral, as aforesaid, executors are confronted by a possible demand by the defendants, that executors give bond conditioned upon the payment of the transfer inheritance tax claimed by defendants, in an amount exceeding $24,000,000, as required by the New Jersey Act of April 20, 1909, ch. 228 as amended. It is extremely doubtful whether a bond in this amount could be obtained, but if it could be obtained, executors would be obliged to pay a premium thereon in large amount, which would not be recoverable by executors from defendants or from the State of New Jersey in any court by any process.

50. The threat of defendants to collect from decedent's estate, the aforesaid tax of more than $12,000,000, with interest and penalties, renders impossible the proper administration and distribution of decedent's estate.

51. Further prosecution of the litigation between executors and the defendant Martin in the courts of New Jersey [fol. 19] will also require decedent's estate to pay attorney's fees and other expenses of litigation which will not be recoverable by executors from the defendants or from the State of New Jersey, should this proceeding be postponed until the determination by the highest court of New Jersey, of the issues involved in said litigation.

52. The New Jersey Inheritance Tax Act of 1909, purports to impose upon all of the property of decedent's estate a lien for the payment of the tax which defendants threaten to collect, thus rendering it impossible for executors to transfer any of said property free and clear of a claimed encumbrance, unless executors post a bond at irreparable damage to decedent's estate, as heretofore set forth. Said claimed lien constitutes a cloud upon the title to all of the property belonging to decedent's estate.

53. Were the executors to pay the tax which defendants threaten to collect from decedent's estate, it would be the duty of the defendant Martin, State Tax Commissioner, forthwith to pay the same into the State Treasury, and the duty of defendant Albright, State Treasurer of the State of New Jersey, thereupon to apply $10,000,000 of said tax to the redemption of bonds issued under authority of the New Jersey Act of September 19, 1934, ch. 255, and the subsequent sanction of the electors of the State of New Jersey.

54. The State of New Jersey has not consented to be sued in the courts of the United States for the recovery of inheritance tax erroneously paid by executors or illegally collected by defendants.

55. Were executors to pay the tax which defendants threaten to collect from decedent's estate, even if executors could obtain a judgment against defendants individually for illegally collecting and receiving said tax, defend- [fol. 20] ants would be financially unable to respond to such judgment; and defendants' official bonds do not enure to the benefit of executors and in addition would be grossly inadequate to assure the payment of the amount of the tax claimed, even if executors could recover upon such bonds.

56. Were executors to pay the tax which the defendants threaten to collect, their only recourse thereafter would be an application for refund under Section 15 of the New Jersey Act of April 20, 1909, ch. 228, which permits (but does not compel) the Comptroller of New Jersey to draw his warrant on the State Treasurer in favor of persons who have "erroneously" paid transfer inheritance tax to the State Tax Commissioner. However, there is no provision made for the payment of interest for the time that the money has been in the State Treasury, there is no appeal from the refusal of the Comptroller to grant a refund, and a warrant would not result in the immediate payment of the refund for the reason that the available balances in the State Treasury would not enable a refund in the amount of the tax which defendants threaten to collect, to be made until after the lapse of a substantial period of time, if at all.

57. Inheritance taxes can be collected upon the transfer of intangible personal property from a decedent only by the State in which the decedent was domiciled at the date of his death; and any collection of such taxes by any other State is a taking of property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States.

58. If the New Jersey Act of April 20, 1909, ch. 228, authorizes defendants to collect transfer inheritance tax upon the transfer of intangible personal property of a [fol. 21] decedent, who prior to his death had established his dwelling place and family home in another state, without any present intention of not residing there indefinitely, it is unconstitutional in that it deprives the plaintiff as a legatee under decedent's will of her property without due process of law and denies to her the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

59. If said statute authorizes defendants to collect transfer inheritance tax upon the transfer of intangible personal property of the estate of John T. Dorrance, deceased, under the circumstances heretofore in this Bill of Complaint set forth, it is unconstitutional in that it deprives the plaintiff as a legatee under decedent's will of her property without due process of law, and denies to her the equal

protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

60. If said statute be construed as not applying to property of a decedent, who prior to his death had established his dwelling place and family home in another State, without any present intention of not residing there indefinitely, then the threatened collection by the defendants of said inheritance tax unconstitutionally deprives the plaintiff as a legatee under decedent's will, of her property without due process of law and denies to her the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

61. Plaintiff is entitled to raise in this Court the question whether the New Jersey Act of April 20, 1909, ch. 228, as interpreted by the defendants, violates the Constitution of the United States.

[fol. 22] 62. Plaintiff has a right to have this Court determine the facts necessary to a consideration of the constitutional questions raised by this bill of complaint.

63. The threatened collection by defendants of transfer inheritance tax upon the intangible personal property of decedent is repugnant to the provisions of Article IV, Section 1 of the Constitution of the United States in that defendants fail to give full faith and credit as required by said Constitution to the judgment of the Supreme Court of Pennsylvania adjudging decedent to have been domiciled in Pennsylvania on the date of his death.

64. For the reasons heretofore in this bill of complaint set forth, plaintiff is threatened with irreparable injury unless this court grants equitable relief as prayed.

65. For the reasons heretofore in this bill of complaint set forth, plaintiff is without an adequate remedy at law.

Wherefore, plaintiff is in need of equitable relief and prays:

A. That an injunction issue, temporary until hearing and perpetual thereafter, enjoying and restraining the defendants, J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, William D. Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey, Frank J. Murray, Comptroller of the State of New Jersey, Wil-

liam H. Albright, State Treasurer of the State of New Jersey, and David T. Wilentz, Attorney General of the State of New Jersey, and their and each of their deputies, officers, agents, servants and employees, acting under and by virtue of their authority, from in any way collecting [fols. 23-27] or attempting to collect inheritance tax from the executors of John T. Dorrance on the transfer of intangible personal property in the estate of said decedent, now being undertaken, from refusing to issue tax waivers to said executors covering the intangible personal property of said decedent's estate, and from refusing to release from escrow the personal property belonging to said decedent's estate now held in escrow subject to the control of the defendants or any of them.

B. That such other and further relief be granted, as to your Honorable Court shall seem meet.

And the plaintiff will ever pray, etc.

John Milton, Solicitor for and of Counsel With Plaintiff; William A. Schnader, 1719 Packard Building, Philadelphia, Pa., Of Counsel.

[fol. 28] IN UNITED STATES DISTRICT COURT

INJUNCTION AFFIDAVITS—Filed April 1, 1935

CHARLOTTE DORRANCE WRIGHT

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss.:

Charlotte Dorrance Wright being duly sworn according to law deposes and says that she is a daughter of John T. Dorrance, deceased, who died on September 21, 1930, and a legatee under his Will and that the following is a true statement of the facts relating to the removal of the said John T. Dorrance and his family from "Pomona Farms," Cinnaminson, New Jersey, to "Woodcrest," Radnor, Pennsylvania, and the use of "Woodcrest" and "Pomona Farms," respectively, thereafter until the death of said John T. Dorrance:

Beginning in 1911, my father and his family lived at Cinnaminson, New Jersey, in a residence owned by and

leased from Campbell Soup Company. The place was known as "Pomona Farms."

In April, 1925, my father purchased a residential property known as "Woodcrest," at Radnor, Delaware County, Pennsylvania, and took title thereto in the name of himself and my mother as tenants by the entireties. The property consisted of 119 acres, and the purchase price paid by my father was $350,000. "Woodcrest" is located in the finest residential section in the suburbs of Philadelphia. To prepare the property for occupancy, my father expended an amount exceeding the purchase price.

On November 14, 1925, my father removed his wearing apparel, his personal effects, all of the books he had at Cinnaminson,—his most cherished possessions,—and the wearing apparel and other personal effects of my mother [fol. 29] and the rest of our family from Cinnaminson, New Jersey, to "Woodcrest," Radnor, Pennsylvania, and there established his dwelling place and family home, without any present intention of changing it to any other place.

I never heard my father, at any time, express either a desire or an intention to remove his family from Radnor back to Cinnaminson.

I never heard my father make any statement indicating an intention that our family should occupy "Woodcrest", only temporarily. "Woodcrest" was prepared, before November 14, 1925, for permanent occupancy as our family home.

After changing his abode to "Woodcrest", my father spent substantially all of his time there, except when he was at business during the day and when he was in New England on summer vacations or in Europe.

Continuously, from November 14, 1925 to the date of his fatal illness, my father lived with his family at "Woodcrest".

At no time between November 14, 1925, and the date of his fatal illness in September, 1930, did my father and his family ever assemble at Cinnaminson, New Jersey, for any purpose, nor did he, at any time during that period, reside with his family at Cinnaminson or any other place in New Jersey, or otherwise treat the Cinnaminson residence as his home and the home of his family.

During the period between November 14, 1925 and my father's death, my mother, my sisters, my brother and I attended church at Radnor, my sisters, my brother and I

attended school in Pennsylvania, my oldest sister was married at Radnor, and all social functions given by my father or any member of the family, were at "Woodcrest", Radnor, Pennsylvania.

During that period, except when he was in Europe or his family was in New England for the summer, my father [fol. 30] spent his week-ends at "Woodcrest" with his family. One of his greatest delights was to walk about the place and inspect the grounds. As a family we celebrated Thanksgiving day, Christmas day, and all other holidays at "Woodcrest". Whenever my father went to Europe he left from and returned to "Woodcrest"; and when our family went to New England for the summer vacation, its luggage was shipped from and returned to Radnor. In the summers of 1926 and 1927, "Woodcrest" was kept open while our family was in New England, and my father lived at "Woodcrest".

On June 30, 1928, my father purchased additional ground adjoining "Woodcrest", consisting of 8.22 acres, at a cost of $52,500; and on July 27, 1929, another 10 acres at a cost of $60,000.

In August, 1926, my father's mother and sister, both of whom were ill, moved into "Pomona Farms", Cinnaminson, New Jersey, and lived there until they died,—my aunt in the summer of 1928, and my grandmother early in 1929.

Prior to 1925, according to my father's records, the cost per annum of operating "Pomona Farms", as our family home, was between $20,000 and $30,000 per annum. After our family moved to "Woodcrest", the cost of maintaining "Pomona Farms", even though my grandmother and aunt lived there while ill, became less each year. The expenditures for that purpose for 1927 were $10,344.29; for 1928, $8,373.89; for 1929, $6,459.90; and for the first nine months of 1930, $4,200.17. The cost of operating "Woodcrest" was more than $90,000 per annum for 1926 and 1927, and at the same rate per annum for the years 1928, 1929, and 1930, except in the summer when the household servants were taken to Bar Harbor.

Before the occupancy of "Woodcrest" 10 servants were employed at "Pomona Farms"; but after November 14, [fol. 31] 1925, never more than 4. At "Woodcrest", the number of house servants was originally 13, but later 16; and in addition there were always 10 to 12 outside employees.

In 1930, our family had been spending the summer vacation at Bar Harbor, Maine. All of the family servants were taken to Bar Harbor, and the family home at Radnor was not occupied during the summer. My father left Bar Harbor on September 15, 1930 and went to Cinnaminson, intending to stay there until the servants had arrived at "Woodcrest" and prepared it for occupancy. He suffered a stroke at Cinnaminson and died five days later.

My father desired his children to go to Cinnaminson periodically and spend a night there. Mother explained to me that it was necessary for the children to do that because father wished to retain his legal residence in New Jersey and would become involved in a serious tax question under the laws of Pennsylvania unless he retained his legal residence in New Jersey.

Whenever any of us went to Cinnaminson it was necessary to take with us clothing and other effects in a bag as we had no wearing apparel of any kind there.

Our entire family customarily referred to "Woodcrest" as "home". We spoke of the place at Cinnaminson as "the farm".

At the date of my father's death, his only home and the only home of his family was at "Woodcrest", Radnor, Pennsylvania.

Charlotte Dorrance Wright.

Sworn to and subscribed before me this first day of April, 1935.

H. L. Kober, Notary Public. (Seal.) My commission expires Jan. 14, 1939.

[fol. 32] GEORGE MORRIS DORRANCE, M. D.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss.:

George Morris Dorrance, M. D., being duly sworn according to law deposes and says that he is one of the executors under the will of John T. Dorrance, deceased, hereinafter called "decedent"; and that the matters hereinafter in this affidavit set forth are true and correct:

Decedent died at Cinnaminson, New Jersey, on September 21, 1930, and was buried in West Laurel Hill Cemetery, in Philadelphia, Pennsylvania.

Decedent's executors are Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company. Hereinafter in this affidavit they are called "executors".

Decedent was born at Bristol, Pennsylvania, on November 11, 1873, and, until he was 23 years of age lived in Pennsylvania except when in attendance at college and university. At that age he entered the employ of Joseph Campbell Preserve Company, of Camden, New Jersey, and resided in Camden.

Decedent was married on August 18, 1906. He and his wife lived in Camden, New Jersey, until the latter part of the year 1907, when they moved to Philadelphia, Pennsylvania. They resided in Philadelphia until 1911, when they established their home at Cinnaminson, New Jersey, in a property owned by and leased from Campbell Soup Company, and known as "Pomona Farms".

Decedent was survived by his wife and by five children, born, respectively, in 1907, 1909, 1911, 1915 and 1919.

In 1911, decedent was an officer of Campbell Soup Company, of Camden, New Jersey, and in 1915, he became its [fol. 33] president. At his death he was the owner of all of the shares of capital stock of that company.

On November 14, 1925, decedent moved his wearing apparel, his personal effect, his library, and the wearing apparel and personal effects of his family to a residence known as "Woodcrest", at Radnor, Delaware County, Pennsylvania.

Decedent was unwilling to pay, and did not pay, the Pennsylvania four-mill tax upon his shares of capital stock of Campbell Soup Company, as he was required to do by the Pennsylvania Act of June 17, 1913, P. L. 507, its amendments and supplements. For this reason he desired to retain a "legal residence" in New Jersey, and in an effort to do so, notwithstanding the removal of his family home to Pennsylvania and the absence of any present intention not to reside there indefinitely, he continued to lease from Campbell Soup Company, "Pomona Farms" at Cinnaminson, New Jersey; occasionally, with his wife, he spent a night there; he continued to vote and pay a small personal property tax at Cinnaminson; he retained his membership in the vestry of a church at Riverton, New Jersey; and he made many declarations, including a statement in his will, that he was a resident of the State of New Jersey. Subse-

quent to decedent's death, tax in an amount exceeding $1,000,000 was paid by decedent's estate to Delaware County, Pennsylvania, for the years 1925 to 1930 inclusive, as required by said Act.

At the date of his death, and for some years prior thereto, decedent owned intangible personal property of the value of more than $100,000,000.

By his will, decedent required his executors to probate his will in New Jersey or forfeit their rights to serve as executors. Accordingly, the will was probated, October 2, 1930, in the office of the Surrogate of Burlington County, [fol. 34] New Jersey, and letters testamentary thereon were issued to executors.

On April 21, 1931, the Register of Wills of Delaware County, Pennsylvania, made an appraisement against the the estate of decedent as a resident of said county, fixing the value of decedent's taxable personal property, including all of his intangible personal property, at $199,990,000, upon which the total transfer inheritance tax due to the Commonwealth was assessed at $31,465,200. Said appraisement was made under authority of the Pennsylvania Acts of June 20, 1919, P. L. 521, May 7, 1927, P. L. 859, and May 16, 1929, P. L. 1782.

On May 18, 1931, executors appealed from the assessment made by the Register of Wills of Delaware County, Pennsylvania, to the Orphans Court of Delaware County, Pennsylvania, and perfected their appeal by filing their bond in the amount fixed by the Court, conditioned for the payment of any tax which might be found due and payable.

On October 19, 1931, the Orphans Court of Delaware County, Pennsylvania, proceeded to take testimony on the appeal from the assessment made by the Register of Wills of that County, as aforesaid. Among the witnesses who testified, was William D. Kelly, State Supervisor, Inheritance Tax Bureau, of New Jersey. On February 15, 1932, the Orphans Court sustained the appeal and set aside the assessment.

From the decision of the Orphans Court of Delaware County, the Commonwealth of Pennsylvania took an appeal to the Supreme Court of Pennsylvania; and the latter court on September 26, 1932, holding that decedent was domiciled in Pennsylvania on the date of his death, reversed the Orphans Court of Delaware County and re-

instated, in a modified amount, the assessment made by the Register of Wills.

Executors filed a petition in the Supreme Court of the United States for a writ of certiorari to the Supreme Court [fol. 35] of Pennsylvania, which was denied on December 5, 1932, because a federal question was not properly presented to, and was not passed upon by the Supreme Court of Pennsylvania. Thereafter executors applied to the Supreme Court of Pennsylvania for a reargument upon which they filed a brief presenting the federal question, and after that court's refusal to reconsider its decision, filed a second petition in the Supreme Court of the United States for a writ of certiorari which was refused on March 13, 1933.

While executors' petition to the United States Supreme Court for a writ of certiorari was pending, the State of New Jersey asked leave of that court to intervene, and executors filed their formal consent to such intervention; but leave was denied. However, leave was granted to the State of New Jersey to file a brief as amicus curiæ; and on November 23, 1932, the Attorney General of New Jersey filed a brief pursuant to the leave granted.

On March 27, 1933, the Supreme Court of Pennsylvania entered judgment against executors of decedent, for transfer inheritance tax in the amount of $14,394,698.88, subject to an additional assessment and imposition of tax if and when the final determination of the Federal estate tax should disclose that 80 per centum thereof exceeds $14,394,698.88. The judgment included a tax upon the transfer of all of decedent's intangible personal property.

On March 29, 1933, a like judgment was entered against executors in the Orphans Court of Delaware County, Pennsylvania, which judgment was final and conclusive upon executors.

Because of said judgment, executors were compelled to pay to the Commonwealth of Pennsylvania transfer inheritance tax in the amount of $14,394,698.88, with interest amounting to $104,278.03. They made payment on March [fol. 36] 31, 1933. On the same date they gave their bond to the Commonwealth of Pennsylvania in the amount of $4,000,000, conditioned upon the payment of any additional tax which might become due under the said judgment.

On October 17, 1931, the State Tax Commissioner of New Jersey, purporting to act under authority conferred

upon him by the New Jersey Transfer Inheritance Tax Act of April 20, 1909, ch. 228, its amendments and supplements, made an assessment of transfer inheritance tax against decedent's estate in the sum of $12,247,333.52, with an additional assessment in the sum of $4,521,143.90 on account of certain contingent remainders. Said assessment included tax upon the transfer of all of decedent's intangible personal property.

Pending the decision of the Orphans Court of Delaware County, Pennsylvania, the defendant State Tax Commissioner of New Jersey on December 12, 1931, opened the assessments made by him on October 17, 1931, as aforesaid, for the purpose of permitting executors to submit to him additional information regarding decedent's domicile.

On October 10, 1932, after the entire record in the Pennsylvania case, including the judgment of the Supreme Court of Pennsylvania, was offered in evidence before him, without objection on the part of the defendants or any of them, defendant, the State Tax Commissioner of New Jersey, made an assessment of transfer inheritance tax against the decedent's estate in the amount of $12,247,333.52, with interest at the rate of 10% per annum from September 21, 1931. The Pennsylvania judgment established that decedent was domiciled in Pennsylvania at the time of his death. Said assessment included tax upon the transfer of all of decedent's intangible personal property.

On December 9, 1932, executors appealed from the New Jersey assessment of transfer inheritance tax to the Ordi- [fol. 37] nary of the State of New Jersey; and after hearing the appeal the Ordinary entered a decree in the New Jersey Prerogative Court on May 11, 1934, sustaining the Tax Commissioner's assessment of October 10, 1932. In its decree the said court refused to give full faith and credit to the judgment of the Supreme Court of Pennsylvania, and, upon the same evidence, stated conclusions at variance with those of the Supreme Court of Pennsylvania.

From the decree of the Prerogative Court, executors obtained a writ of certiorari from the Supreme Court of the State of New Jersey, which on February 11, 1935, sustained the decree of the Prerogative Court.

When the defendant Martin, State Tax Commissioner, made his assessment of $12,247,333.52 against executors, and when the assessment had been sustained by the Pre-

rogative Court, the administrative procedure provided by the New Jersey Inheritance Tax Act of April 20, 1909, ch 228, was at an end.

Defendants threaten to collect from executors the transfer inheritance tax assessed against decedent's estate by the defendant State Tax Commissioner.

By the New Jersey Act of July 11, 1934, ch. 249, the State Tax Commissioner was authorized "to adjust and settle transfer inheritance taxes due the State, where the matter is now in litigation and the question of the domicile of decedent is at issue and has been adjudged against the estate of decedent both in this State and in another State, by the acceptance of the principal sum due and the remission of all interest due on such principal sum."

On February 15, 1935, defendant Martin addressed to executors, through their proctor, the following letter:

[fol. 38] "State of New Jersey

"State Tax Department

"Transfer Inheritance Tax Bureau

Trenton February 15, 1935.

"Address all communications c/o Transfer Inheritance Tax Bureau.

"William D. Lippincott, Esquire, Proctor for the Executors of the Estate of John T. Dorrance, Deceased, 35 North Fourth Street, Camden, N. J.

"Dear Sir:

"As you know the New Jersey Prerogative Court by a final decree dated May 11. 1934, affirmed a transfer inheritance tax assessment on the estate of John T. Dorrance, deceased, made by the State Tax Commissioner, dated October 10, 1932, amounting to $12,247,333.52, subject to certain modifications. You know also that on February 8, 1935 the New Jersey Supreme Court sustained the decree of the Prerogative Court. The following statement shows the amount of the claim due and payable as of February 15, 1935:

"Amount of tax assessment as modified by decree	$12,183,459.96
"Interest thereon from Sept. 21, 1931 to Feb. 15, 1935	4,145,713.70
"Total amount of tax with interest presently due and payable	$16,329,173.66

"You are undoubtedly also aware of the fact that by the provisions of Chapter 249, Laws of New Jersey 1934, which became effective the 11th day of July 1934, the State Tax Commissioner was authorized to adjust and settle transfer inheritance taxes due this State in certain cases by the acceptance of the principal sum due and the remission of all interest due on such principal sum. You are also un- [fol. 39] doubtedly aware of the fact that this legislation was intended to permit a settlement of the taxes assessed in this estate.

"To date you have made no overtures of settlement to me, but instead have indicated your intention to prosecute the litigation to a finality. In view of this attitude on your part, I deem it only proper to advise you that any further prosecution of the litigation by you will cause me to refuse any relief in interest charges should the litigation finally result in an affirmance of the assessment.

"Very respectfully, (Sgd.) J. H. Thayer Martin,
State Tax Commissioner."

Thus, an appeal by plaintiffs, from the judgment of the Supreme Court of New Jersey to the Court of Errors and Appeals, will cost decedent's estate upwards of $4,000,000, if the assessment against decedent's estate should be sustained.

On April 25, 1933, after the Supreme Court of Pennsylvania had held that decedent was domiciled in Pennsylvania, executors filed before the Surrogate of Burlington County, New Jersey, a petition praying him to revoke his order of October 2, 1930, admitting the will of John T. Dorrance to probate, and granting letters testamentary to executors. No action has as yet been taken on that petition.

On May 12, 1933, defendant Martin, State Tax Commissioner of the State of New Jersey, filed in the Burlington County Orphans Court, of Burlington County, New Jersey, a petition praying the court to remove executors and to ap-

point in their stead the State Treasurer of New Jersey as executor and trustee under decedent's will. No action has as yet been taken on that petition.

[fol. 40] Because of defendants' threat to collect from decedent's estate, a transfer inheritance tax, as aforesaid, executors are compelled to maintain a large cash reserve at a low rate of interest, and have been and are being prevented from selling, pledging, transferring, or otherwise utilizing personal property of decedent's estate of the appraised value of more than $81,000,000.

On July 1, 1933, New Jersey State road bonds belonging to decedent's estate in the amount of $1,665,000, matured. Defendant Martin, State Tax Commissioner of New Jersey, and defendant Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey, refused to issue waivers to executors releasing the maturing bonds, unless and until executors placed in escrow other New Jersey bonds of an equal par value, conditioned upon the payment of inheritance tax by executors, if such tax be found due and owing. Thereupon executors placed in escrow other New Jersey bonds of the par value of $1,665,000, appraised at $1,738,360.

On June 26, 1934, in order to avoid, for the time being, the posting of a bond in the amount of upwards of $24,000,000, executors placed in escrow, conditioned upon the payment of inheritance tax by them if such tax be found due and owing, all of the preferred stock of Campbell Soup Company, of the appraised value of $12,360,000.

Executors hold, in addition, personal property belonging to decedent's estate of the appraised value of more than $67,000,000, which cannot be sold, pledged, transferred or otherwise utilized unless and until waivers have been issued by the State Tax Commissioner of New Jersey and the State Supervisor, Inheritance Tax Bureau, of the State of New Jersey. Said officers have refused to issue such waivers.

Notwithstanding the deposit of collateral, as aforesaid, executors are confronted by a possible demand by the de-
[fol. 41] fendants, that executors give bond conditioned upon the payment of the transfer inheritance tax claimed by defendants, in an amount exceeding $24,000,000, as required by the New Jersey Act of April 20, 1909, ch. 228, as amended. It is extremely doubtful whether a bond in this amount could be obtained, but if it could be obtained, ex-

ecutors would be obliged to pay a premium thereon in a large amount, which they would not be able to recover from defendants or from the State of New Jersey in any court by any process.

The threat of defendants to collect from decedent's estate, the aforesaid tax of more than $12,000,000 with interest and penalties, renders impossible the proper administration and distribution of decedent's estate.

Further prosecution of the litigation between executors and the defendant Martin in the courts of New Jersey, will also require decedent's estate to pay attorneys' fees and other expenses of litigation which will not be recoverable by executors from the defendants or from the State of New Jersey, should this proceeding be postponed until the determination by the highest court of New Jersey, of the issues involved in said litigation.

The New Jersey Inheritance Tax Act of 1909 purports to impose upon all of the property of decedent's estate a lien for the payment of the tax which defendants threaten to collect, thus rendering it impossible for executors to transfer any of said property free and clear of a claimed encumbrance, unless the executors post a bond at irreparable damage to decedent's estate, as heretofore set forth. Said claimed lien constitutes a cloud upon the title to all of the property belonging to decedent's estate.

Were executors to pay the tax which defendants threaten to collect from decedent's estate, it would be the duty of the defendant Martin, State Tax Commissioner, forthwith to pay the same into the State Treasury, and the duty of [fol. 42] defendant Albright, State Treasurer of the State of New Jersey, thereupon to apply $10,000,000 of said tax to the redemption of bonds issued under authority of the New Jersey Act of September 19, 1934, ch, 255, and the subsequent sanction of the electors of the State of New Jersey.

The State of New Jersey has not consented to be sued in the courts of the United States for the recovery of inheritance tax erroneously paid by executors or illegally collected by defendants.

Were executors to pay the tax which defendants threaten to collect from decedent's estate, even if executors could obtain a judgment against defendants individually for illegally collecting and receiving said tax, defendants would be financially unable to respond to such judgment; and defendants' official bonds do not enure to the benefit of execu-

tors and in addition would be grossly inadequate to assure the payment of the amount of the tax claimed, even if executors could recover upon such bonds.

Were executors to pay the tax which the defendants threaten to collect, their only recourse thereafter would be an application for refund under Section 15 of the New Jersey Act of April 20, 1909, ch. 228, which permits (but does not compel) the Comptroller of New Jersey to draw his warrant on the State Treasurer in favor of executors who have "erroneously" paid transfer inheritance tax to the State Tax Commissioner. However, there is no provision made for the payment of interest for the time that the money has been in the State Treasury, there is no appeal from the refusal of the Comptroller to grant a refund, and a warrant would not result in the immediate payment of the refund for the reason that the available balances in the State Treasury would not enable a refund in the amount of the tax which defendants threaten to collect, to be made until after the lapse of a substantial period of time, if at all. [fol. 43] By his will decedent provided that all State and Federal inheritance taxes should be paid out of the principal of his estate, but that, subject to certain annual payments to his widow and children, the income should be accumulated for such period, not exceeding sixteen years, as would be necessary to repay to principal the amount of such State and Federal inheritance taxes; and that when such repayment has been made or, at the end of sixteen years, the principal of the Estate shall be divided into eight shares, the income of one of which shall be paid to Elinor Dorrance Hill for life.

Under said provisions of decedent's will, Elinor Dorrance Hill's annual income will be materially increased as soon as the principal of the estate is divided into shares. The injury to decedent's estate resulting from the matters in this affidavit set forth, and particularly, the illegal collection by defendants of transfer inheritance tax upon the intangible personal property in decedent's estate, will deprive Elinor Dorrance Hill of income greatly exceeding $3,000.

The specific assessment of inheritance tax made by defendants against Elinor Dorrance Hill's life interest is in the amount of $1,566,925.01.

Immediate and irreparable injury will result to the decedent's estate unless defendants are restrained from col-

lecting or attempting to collect the tax which they threaten to collect under the claimed authority of the New Jersey Act of April 20, 1909, ch, 228, its amendments and supplements. Were defendants to demand the posting of a bond in an amount exceeding $24,000,000 conditioned for the payment of the tax they threaten to collect, the damage to the estate would be immediate and irreparable, for the reasons already set forth in this affidavit. And were they to institute proceedings for the collection of the tax, the damage to the estate would likewise be immediate and irrepa-
[fol. 44] rable in that such proceedings would involve the estate in the expenditure of attorneys' fees, premiums on bonds and other expenses which could not be postponed and which would not be recoverable either from the defendants or from the State of New Jersey by any process.

I am advised that for the reasons set forth in the bill of complaint the assessment already made by the defendants is unconstitutional under the Constitution of the United States either because the New Jersey Act of April 20, 1909, ch. 228 is unconstitutional if defendants have construed it properly, or because if they have not, they are proceeding to collect a tax from executors for the collection of which they have no lawful authority.

George Morris Dorrance, M. D.

Sworn to and subscribed before me this first day of April, 1935.

H. L. Kober, Notary Public. (Seal.) My commission expires Jan. 14, 1939.

[fol. 45] IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL AFFIDAVIT OF GEORGE MORRIS DORRANCE, M. D. —Filed April 10, 1935

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss.:

George Morris Dorrance, M. D., being duly sworn according to law, deposes and says that he is one of the executors of the Will of John T. Dorrance, deceased, that he has already made an injunction affidavit for use in the above case; and that the matters hereinafter in this supplemental affidavit set forth are true and correct:

On February 13, 1935, the executors of Dr. John T. Dorrance by Honorable William D. Lippincott, their counsel, notified Honorable Duane E. Minard, attorney for J. H. Thayer Martin, State Tax Commissioner of New Jersey, the respondent in the case of Ethel M. Dorrance, et al., prosecutors, v. J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, respondent on certiorari before the Supreme Court of New Jersey, that the executors of the Will of Dr. John T. Dorrance, deceased, expect to take an appeal to the Court of Errors and Appeals in said case.

The executors of Dr. John T. Dorrance will take an appeal to the New Jersey Court of Errors and Appeals from the decision of the Supreme Court of New Jersey in said case, unless prior to the expiration of their time for taking such appeal this action in the United States District Court renders such an appeal unnecessary.

I am advised and therefore aver that the decision in the aforesaid case rendered by the Supreme Court of New Jersey is not final but is subject to judicial review by the Court of Errors and Appeals; that the tax which the defendants in the present action demand cannot be collected until after the institution of an action of debt in the name [fols. 46-48] of the State of New Jersey or a statutory proceeding in the Prerogative Court of New Jersey; that the action of the Supreme Court of New Jersey in said case was of an administrative character and not judicial; and that the period during which the executors of Dr. John T. Dorrance may take an appeal to the Court of Errors and Appeals will not expire until February 11, 1936.

The judgment entered in the Supreme Court of Pennsylvania on March 27, 1933, was a judgment in favor of the Commonwealth of Pennsylvania as plaintiff and against the executors of Dr. John T. Dorrance as defendants.

George Morris Dorrance, M. D.

Sworn to and subscribed before me this tenth day of April, 1935.

H. L. Kober, Notary Public. (Seal.) My commission expires January 14, 1939.

[fol. 49] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity

No. 5092

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER AND APPLICATION FOR HEARING FOR INTERLOCUTORY INJUNCTION—Filed April 1, 1935.

To the Honorable J. Warren Davis, Judge of the United States Circuit Court of Appeals for the Third Circuit:

Comes now the plaintiff and moves the Court for an order granting a temporary restraining order returnable within ten days from the date thereof, and upon the Bill of Complaint herein and upon the annexed affidavits of Charlotte Dorrance Wright and George Morris Dorrance, M. D., verified on the first day of April, 1935, for a writ of injunction enjoining and restraining, pending the final judgment in this action and until the further order of this court, the defendants and each of them and their and each [fol. 50] of their deputies, officers, agents, servants and employes, and any and every person acting under and by virtue of their authority from in any way collecting or attempting to collect from the executors or from the estate of John T. Dorrance, deceased, transfer inheritance taxes upon the intangible personal property belonging to the said estate now being undertaken under the alleged authority of the New Jersey Act of April 20, 1909, ch. 228, its amendments and supplements, and from prosecuting or bringing any action at law or in equity against said executors or estate or taking any other step for the collection of said taxes; and plaintiff prays your Honor to call to your Honor's assistance to hear and determine this application, two other judges in accordance with the provisions of Section 266 of the Judicial Code, and to expedite the hearing of this application and set the same down for a hearing at the earliest practical date; and for such other and further

relief as to the court may seem just and proper in the premises.

Dated at Jersey City, New Jersey, March 30, 1935.

John Milton, Solicitor for Plaintiff, 1 Exchange Place, Jersey City, N. J. William A. Schnader, 1719 Packard Building, Philadelphia, Pa., of Counsel.

[fol. 51] IN UNITED STATES DISTRICT COURT

In Equity

No. 5092

[Title omitted]

RESTRAINING ORDER—Filed April 2, 1935

This case came on to be heard upon the motion of Elinor Dorrance Hill, the plaintiff, for an interlocutory injunction against J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, William D. Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey, Frank J. Murray, Comptroller of the State of New Jersey, William H. Albright, State Treasurer of the State of New Jersey and David T. Wilentz, Attorney General of the State of New Jersey, the defendants, on the verified bill of complaint and on the affidavits of Charlotte Dorrance Wright and George Morris Dorrance, M. D., verified the first day of April, 1935, and it appearing to this court that said bill of complaint seeks an interlocutory injunction restraining the enforcement of the New Jersey Act of April [fol. 52] 20, 1909, ch. 228, as amended, by restraining the acts of J. H. Thayer Martin, State Tax Commissioner, William D. Kelly, State Supervisor, Inheritance Tax Bureau, Frank J. Murray, Comptroller, William H. Albright, State Treasurer, and David T. Wilentz, Attorney General, in the enforcement of such statute upon the grounds of the unconstitutionality thereof, and on the unconstitutionality of any assessment and collection of inheritance taxes upon the intangible personal property of the estate of John T. Dorrance, deceased, pursuant to such statute, as provided by Section 266 of The Judicial Code, it is Ordered, Ajudged, and Decreed as follows:

1. The Honorable J. Warren Davis, Circuit Judge of the United States Circuit Court of Appeals, Third Circuit, hereby calls to his assistance to hear and determine the application for an interlocutory injunction in this case, the Honorable Victor B. Woolley and the Honorable John Boyd Avis.

2. It is further ordered, adjudged and decreed that said defendants appear to show cause, if any they have, on April 12, 1935, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, in Room ——, Post Office Building, Trenton, New Jersey, why an interlocutory injunction should not issue as prayed for in said Bill of Complaint, enjoining said defendants and each of them, and their and each of their deputies, officers, agents, servants and employees, and any and every person acting under and by virtue of their authority, from in any way collecting or attempting to collect inheritance tax from the executors of John T. Dorrance, deceased, or from the estate of said decedent, on the transfer of intangible personal property in the estate of said decedent, now being undertaken under the alleged authority of the New Jersey Act of April 20, 1909, ch. 228, as amended, and from prosecuting or bring-[fol. 53] ing any action at law or in equity against the said executors in the said estate for the collection of said taxes, or taking any other step looking towards said collection.

3. It appearing that immediate and irreparable damage will be caused by reason of the threat of the collection of the aforesaid inheritance tax by the defendants, in that such threat is seriously interfering with the proper administration of the estate of John T. Dorrance, deceased, and is preventing distribution of the estate, and is forcing the executors of said estate to maintain large cash reserves at a low rate of interest to cover the tax claimed by defendants, the cost of litigation, including the cost of bonds and of attorneys' fees, and in that the threatened tax constitutes a lien and therefore a cloud on the title of the executors to property of the estate of the value of more than $80,000,000, and interferes with the sale, transfer, pledge or other use thereof, and in that the defendants are in a position to demand that said executors file a bond in the amount of upwards of $24,000,000, conditioned upon the payment of said tax, to the immediate and irreparable injury of the estate, and to institute an action for the collec-

tion of said tax, unless a temporary restraining order is issued, ex parte and without notice, against said defendants, until the hearing of said application for an interlocutory injunction, it is further Ordered, Adjudged and Decreed, that said J. H. Thayer Martin, State Tax Commissioner, William D. Kelly, State Supervisor, Inheritance Tax Bureau, Frank J. Murray, Comptroller, William H. Albright, State Treasurer, and David T. Wilentz, Attorney General, of the State of New Jersey, be enjoined from in any way collecting or attempting to collect inheritance taxes from the executors or otherwise from the estate of John T. Dorrance, deceased, upon the intangible personal property of [fols. 54-56] said decedent's estate, now being undertaken under the alleged authority of the New Jersey Act of April 20, 1909, ch. 228, as amended, and from prosecuting or bringing any action at law or in equity against the said executors or against the said estate for the collection of said taxes, until said hearing on said application for an interlocutory injunction. Bond sur restraining order in $1000 to be filed.

Dated this 2d day of April, 1935, at 2:20 o'clock P. M.

J. Warren Davis, Circuit Judge.

[fols. 57 & 58] IN UNITED STATES DISTRICT COURT

In Equity

No. 5092

[Title omitted]

ANSWER—Filed April 12, 1935

The joint and several answer of the defendants, J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey; William D. Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey; Frank J. Murray, Comptroller of the State of New Jersey; William H. Albright, State Treasurer of the State of New Jersey; and David T. Wilentz, Attorney General of the State of New Jersey.

These defendants, for answer to the bill of complaint, say:

1. They have no knowledge of information sufficient to form a belief as to the allegations of paragraph 1.

[fol. 59] 2. Paragraph 2 is admitted.

3. Paragraph 3 is denied; except that they say that defendant, J. H. Thayer Martin, is the chief officer of the State Tax Department of the State of New Jersey; said department was established by Chapter 336, page 823, New Jersey Laws of 1931, wherein and whereby the chief officer of said Department, was denominated the "State Tax Commissioner"; all transfer inheritance taxes imposed by the statutes of the State of New Jersey are to be paid to said defendant as the State Tax Commissioner and deposited with the Treasurer of the State of New Jersey when and as collected, for the use of said state.

Under said statutes it is the duty of said defendant, as State Tax Commissioner, to fix the amount of the taxes to be imposed at the rates specified in said statutes, upon the clear market value of the property; and to assess and fix the cash value of the estates of decedents and to levy the tax to which the same is liable and to give notice thereof, by mail, to all parties interested therein.

It is also the duty of the State Tax Commissioner, on satisfactory proof rendered to said Commissioner, to certify to the Comptroller of the Treasury the amount of any tax that shall have been paid erroneously to said Commissioner, provided that application for repayment thereof be made within two years from the date of such payment.

It is also the duty of the State Tax Commissioner when it shall appear to him that any tax which has accrued under the Transfer Inheritance Tax Act has not been paid according to law, to report such fact, in writing, to the register of the Prerogative Court, for further action by said register and by the Ordinary, of said court, as specified in said act. [fol. 60] It is also the duty of the State Tax Commissioner, whenever he shall have reason to believe that any tax is due and unpaid under said act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, to notify the Attorney General of the State of New Jersey, in writing, of such failure to pay such tax, for further action by the Attorney General, as specified in said act, and to perform various other duties, as set forth in detail in said act.

Defendant, William D. Kelly, is the state supervisor of the Inheritance Tax Bureau of the State Tax Department; this is not a statutory office, and the statutes of the State

of New Jersey do not confer upon him any powers or duties respecting the assessment or collection of transfer inheritance taxes. He is an employee of the State Tax Department and performs such duties therein as may be, from time to time, assigned to him by the State Tax Commissioner.

Defendants, Frank J. Murray and William H. Albright, are not charged with any powers or duties respecting the assessment or collection of transfer inheritance taxes.

Defendant, David T. Wilentz, is the Attorney General of the State of New Jersey; under the statutes of said state relating to transfer inheritance taxes, it is the duty of said defendant, when notified, in writing, by the State Tax Commissioner, of any failure to pay such tax, to prosecute the proceedings before the Ordinary for the collection thereof as prescribed in Section 21 of said Act.

4. They admit that the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000; they deny that the matter in controversy arises under the Constitution of the United States.

5. Paragraph 5 is admitted.

[fol. 61] 6. Paragraph 6 is admitted; except that defendants, further answering said paragraph, say:

(a) They pray reference to the original or to a certified copy of said will for certainty as to the terms thereof and as to the powers and duties of the executors therein named.

(b) They pray reference to the original or to a certified copy of the petition for probate of said will and the other proceedings relating to the probate thereof for certainty as to the authority of the Executors to act as the Executors thereof.

(c) Said will was admitted to probate by the Surrogate of Burlington County, New Jersey, and letters testamentary thereon were issued to the Executors, in accordance with the provisions of the statutes and other laws of the State of New Jersey that application for the probate of the will of any person who was resident in this state at his decease, and for letters testamentary thereon, should be made to the Surrogate of the county in which the testator resided at the time of his death; the Executors thereupon assumed the burden of the duties of executors and trustees of said will

and ever since the letters testamentary thereon were issued to the Executors and continuously to the present time, they have been and they now are acting as such executors, pursuant to said statutes and other laws.

Further answering said paragraph they admit that on October 2, 1930 said will was probated in the office of the Surrogate of Burlington County and that letters testamentary thereon were issued to the Executors, and they say that there is annexed hereto and made part hereof a copy of the proceedings before said Surrogate on the probate of said will, including the petition for probate and the affidavit of the executors thereto annexed; the qualifications of the executors, the order for probate and the letters testamentary.

[fol. 62] 7. Paragraph 7 is admitted; except that defendants further answering said paragraph, say that they pray reference to the original, or to a certified copy, of said will for certainty as to the terms thereof in the respects alleged in paragraph 7.

8. Paragraph 8 is denied.

9. Paragraph 9 is admitted.

10. Paragraph 10 is admitted.

11. Paragraph 11 is denied.

12. Paragraph 12 is admitted.

13. Paragraph 13 is denied; except that defendants admit that decedent was married on August 18, 1906, and that he lived with his wife in Camden, New Jersey, until the latter part of the year 1907; they say that he and his wife then temporarily resided with his brother, George Morris Dorrance, M. D., in Philadelphia, Pennsylvania, during certain parts of the year, and from June 1st to October 1st of each year, from the year 1907 to 1911, inclusive, decedent and his wife lived in the City of Atlantic City, New Jersey, and in 1911 they established their permanent home at Cinnaminson, Burlington County, New Jersey, on property known as "Pomona Farms" owned by and leased from Campbell Soup Company, of which decedent, during most of that time, was president and owner of the entire capital stock; that in the year 1896, decedent became domiciled in the State of New Jersey and continued so domiciled in said

state until the time of his death; from 1896 until 1911 his domicile was in the County of Camden, and from 1911 until his death his domicile was in the County of Burlington, in said state.

14. Paragraph 14 is admitted.

[fol. 63] 15. Paragraph 15 is admitted.

16. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 16.

17. Paragraph 17 is denied.

18. They admit that on November 14, 1925, decedent was physically present at Radnor, Pennsylvania; they deny that on that date, or at any time thereafter, decedent was present at his new dwelling place at Radnor, Pennsylvania, with the intention of making the same his home, and without any present intention of not residing there indefinitely.

19. They deny paragraph 19; except that they admit that the decedent continued to lease from Campbell Soup Company, "Pomona Farms" at Cinnaminson, New Jersey, and that he continued to vote and pay personal property taxes at Cinnaminson; that he retained his membership in the vestry of a church at Riverton, New Jersey; that he made many declarations, including statements in his will, that he was a resident of the State of New Jersey; and that subsequent to decedent's death the Executors paid personal property taxes in an amount unknown to defendants, to Delaware County, Pennsylvania, for the years 1925 to 1930, inclusive; said statements in his will are as follows:

"I, John T. Dorrance, of the Township of Cinnaminson, in the County of Burlington and State of New Jersey, being of sound and disposing mind, memory and understanding, do make and publish this, my last will and testament, hereby revoking any and all will or wills heretofore by me at any time made."

"Seventh: I give and bequeath unto my wife, Ethel M. Dorrance, all my clothing, and all of my furniture and furnishings and household goods and household effect of every [fol. 64] kind and description whatsoever, including silverware, china and glassware, rugs and pictures which I shall own at the time of my decease, excepting my grandfather's clock above bequeathed and excepting all tapestries; all of

the furnishings and furniture and household goods and household effect of every kind and description, now used by my wife and myself in the house where I now reside in Cinnaminson Township, Burlington County, New Jersey, and elsewhere, excepting my grandfather's clock above bequeathed and excepting all tapestries, being the property of my said wife, Ethel M. Dorrance.

"Thirty-third: I hereby order and direct that if my said wife, Ethel M. Dorrance, or my said brother, George Morris Dorrance, M. D., or my said brother, Arthur C. Dorrance, or said Camden Safe Deposit and Trust Company, Executors of this, my last will and testament, or any of them shall fail or refuse to make application to the Surrogate of the County of Burlington, or to the Ordinary of the State of New Jersey, for the probate of my last will and testament within thirty days after the date of my decease, then such one or more of my said Executors so failing or refusing to make application to the said Surrogate or to the said Ordinary for the probate of my said last will and testament within thirty days after the date of my decease, shall cease to be such Executor or Executors and Trustee or Trustees, and the appointment in my said last will and testament of such one or more of my said Executors primarily nominated and appointed in and by this, my last will and testament, who shall fail or refuse to make application to the said Surrogate or to the said Ordinary for the probate of my said last will and testament within thirty days after the date of my decease, shall cease and determine and be void and of no effect and as to such of my Executors primarily named in this, my last will and testament, as such Executors, as shall so fail or refuse to make application for the probate of this, my last will and testament, to the said Surrogate or to the said Ordinary within thirty days after my death, I revoke the appointment herein made as [fol. 65] Executor or Executors and also as Trustee or Trustees."

20. Paragraph 20 is denied.

21. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 21; except that they deny that continuously from November 14, 1925, to the date of his fatal illness, decedent lived with his family at Woodcrest.

22. Paragraph 22 is denied.

23. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 23.

24. Paragraph 24 is denied.

25. Paragraph 25 is admitted.

26. Paragraph 26 is denied; except that defendants admit that in or about August, 1926, decedent's mother and sister came to live with decedent at his home in "Pomona Farms," Cinnaminson, New Jersey, and lived there until they died—decedent's sister, in the summer of 1928, and his mother, early in 1929.

27. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 27.

28. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 28.

29. Paragraph 29 is denied; except that defendants admit that in 1930 decedent and his family spent their summer vacation at Bar Harbor, Maine; that decedent left Bar Harbor on September 15, 1930, and went to Cinnaminson, where he suffered a stroke a few days after arrival and died there five days later.

30. They admit that at the time of his death the decedent owned intangible personal property of the value of more [fol. 66] than $100,000,000.00; they have no knowledge or information sufficient to form a belief as to whether he owned intangible personal property of said value for some years prior to the date of his death.

31. Paragraph 31 is denied.

32. Paragraph 32 is admitted; except that they say that the appeal mentioned therein was not from any assessment against the estate of decedent but from an alleged appraisement thereof.

33. Paragraph 33 is admitted; except that they say that the appeal mentioned therein was not from any assessment against the estate of decedent but from an alleged appraisement thereof; and except that they say that the defendant, William D. Kelly, at the request of the attorneys for the Executors, attended as a witness at the Orphans' Court of

Delaware County, Pennsylvania, and identified an exemplified copy of the bill for the assessment of the New Jersey inheritance taxes upon the estate of the decedent, which was presented to said defendant by said attorneys for the purpose of identification by him and was offered by said attorneys as Exhibit "C."

34. Paragraph 34 is admitted; except the defendants say that the judgment of the Pennsylvania Supreme Court was as follows:

"The decree of the court below is reversed and the appraisement, subject to modifications indicated by the Commonwealth stipulation as to the value of the estate, is reinstated; the cost to be paid by appellees."

35. Paragraph 35 is admitted; except that defendants, further answering said paragraph, say that the reasons for the refusal of the Supreme Court of Pennsylavnia for a reargument are set forth in the opinion of that court as follows:

"A general reargument of this case was not granted. [fol. 67] Reargument was allowed under Rule 84, solely to permit the appellee-executors formally to bring to the attention of this Court the fact that they had filed an amended petition in the court of first instance suggesting a question or questions under the due process clause of the Fourteenth Amendment. On the appeal to this Court, no reference to the matter was made in the arguments though provision therefor is expressly made in Rule 47. The executors now urge that we pass on those questions, suggested in the court in the first instance, and reconsider the appeal on a theory not presented when the case was argued here. 'The Commonwealth objects to such reconsideration, contending that 'They (the executors) deliberately elected to argue the case as one arising under the law of Pennsylvania.'

At the time that this Court decided the question of fact—in its judgment, a matter for decision according to the law of Pennsylvania—it was held, for the reasons stated in the opinion filed, that John T. Dorrance was domiciled in Pennsylvania. As no federal question was involved, or presented by the records or briefs or in the oral argument, for consideration in the decision of the basic matter of fact, none was considered or decided and none remains for decision.

No reason appears for modifying the decision originally made.

Justices Schaffer and Drew dissent from this order."

36. Paragraph 36 is admitted; except that the defendants further answering said paragraph, say that said petitions and brief were filed at the request, and with the knowledge, consent and approval of the Executors.

37. Paragraph 37 is admitted; except that the defendants, further answering said paragraph, say that none of the defendants, nor the State of New Jersey, nor any officer of said state, was a party to the suit in which said judgments were entered and neither of said judgments was ever [fol. 68] sued upon or established in any court of New Jersey or of the United States; and neither of said judgments is binding upon these defendants or upon the State of New Jersey.

38. They admit that the Executors paid to the Commonwealth of Pennsylvania transfer inheritance tax in the amount of $14,394,698.88, with interest, and that said payment was made on March 31, 1933; they deny that the Executors were compelled to pay the same, because of said judgment or otherwise; they have no knowledge or information sufficient to form a belief as to whether on March 31, 1933, the Executors gave bond to the Commonwealth of Pennsylvania in the amount of $4,000,000, conditioned upon the payment of any additional tax which might become due under said judgment; they say if any such bond was given, it was given voluntarily by the Executors and not by the compulsion of said judgment.

39. Paragraph 39 is admitted; except that defendants, further answering said paragraph, say that the said assessments were made by the defendant, J. H. Thayer Martin, as State Tax Commissioner of New Jersey, upon proofs and documents submitted on behalf of the Executors, including an inheritance tax return and an amended inheritance tax return signed and sworn to by one of the Executors, namely Camden Safe Deposit and Trust Company, on behalf of all of the Executors wherein and whereby the Executors alleged and swore that the said decedent was "late of Burlington County"—referring to Burlington County, New Jersey.

40. Paragraph 40 is admitted; except that defendants, further answering said paragraph, say that the defendant, J. H. Thayer Martin, as State Tax Commissioner of the State of New Jersey, opened the said assessments on the petition of the Executors requesting him to do so.

[fol. 69] 41. Paragraph 41 is admitted; except that they deny that the Pennsylvania judgment therein mentioned established as against the defendants or against the State of New Jersey that the decedent was domiciled in Pennsylvania at the time of his death.

42. They admit that on December 9, 1932 the Executors appealed from the New Jersey assessment of transfer inheritance tax to the Ordinary of the State of New Jersey; and that after hearing the appeal the Ordinary entered a decree in the New Jersey Prerogative Court on May 11, 1934, sustaining the Tax Commissioner's assessment of October 10, 1932, except in certain respects immaterial to the present issues; and therein and thereby said court ordered, adjudged and decreed that the assessment of transfer inheritance taxes, as made by the said Tax Commissioner on October 10, 1932, amounting to $12,247,333.52 upon the transfer of the property of the decedent, as that of a resident decedent, be affirmed; said decree was based upon conclusions and supplemental conclusions of the said Ordinary; copies of said decree, conclusions and supplemental conclusions are annexed hereto and made part hereof.

They deny that in said decree said court refused to give full faith and credit to the judgment of the Supreme Court of Pennsylvania; and they deny that said court upon the same evidence stated conclusions at variance with those of the Supreme Court of Pennsylvania.

43. Paragraph 43 is admitted; further answering said paragraph they say that copies of the decision of the Supreme Court and of the judgment of said court, are hereto annexed and made part hereof.

44. Paragraph 44 is denied; further answering said paragraph the defendants say that the administrative procedure provided by the New Jersey statutes therein mentioned [fol. 70] was at an end at the time the State Tax Commissioner of New Jersey completed his assessment of the trans-

fer inheritance tax against the estate of the decedent on October 10, 1932.

45. Paragraph 45 is denied; except that they admit that said assessment includes a tax on the intangible personal property of decedent's estate.

46. Paragraph 46 is admitted.

47. Paragraph 47 is denied.

48. They deny that because of the threat of the defendants to collect from the estate of decedent a transfer inheritance tax, the Executors are compelled to maintain a large cash reserve at a low rate of interest; they deny that by reason thereof the Executors have been and are being prevented from selling, pledging, transfering, or otherwise utilizing personal property of decedent's estate of the appraised value of more than $81,000,000.

They admit the allegations of said paragraph relating to the maturity of New Jersey State Road Bonds and the substitution therefor of other New Jersey bonds. Said substitution of bonds was made pursuant to an agreement dated November 10, 1933 between the Executors and the defendant State Tax Commissioner, a copy of which is annexed hereto and made part hereof.

They admit that on June 26, 1934, the Executors placed in escrow all the preferred stock of Campbell Soup Company of the appraised value of $12,360,000, conditioned upon the payment of inheritance tax by the Executors, if such tax be found due and owing; and further answering said allegations they say that said stock was placed in escrow in accordance with and pursuant to an agreement, of which copy is annexed and made part hereof; which said deposit of stock was made (in lieu of giving bond) pursuant to the direction of the New Jersey Supreme Court [fol. 71] as a condition precedent to the issuance of a writ of certiorari.

They admit that the Executors held, in addition, personal property belonging to the estate of decedent of the appraised value of more than $67,000,000; they admit that the same cannot be sold, pledged, transferred, or otherwise utilized, unless and until waivers have been issued by the State Tax Commissioner of the State of New Jersey; further answering said allegations they say that if and when

the Executors desire to sell, pledge, transfer, or otherwise utilize said personal property they may do so by giving bonds or other security for the payment of the judgment for taxes or by substituting other satisfactory securities; and the only securities which the Executors have given for these taxes or that has been required, pending the litigation, is the deposit of said bonds and stock in escrow under the terms of said agreements; and further answering said allegations they say that the Executors have not requested the State Tax Commissioner to issue waivers on said personal property or any part thereof.

Further answering said paragraph defendants say that said personal property belongs to a trust set up by the decedent's will which trust is now being administered by the Executors as trustees, and is to continue for a period of not exceeding 16 years; that said Executors have no power or authority to sell, pledge, transfer or otherwise utilize said personal property, except at the terms and in the manner prescribed in said will.

49. Paragraph 49 is denied.

50. Paragraph 50 is denied.

51. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 51; and further answering said paragraph they say that provision [fol. 72] is made by the statutes of New Jersey for the deduction of expenses of administration, including attorney's fees.

52. Paragraph 52 is denied.

53. Paragraph 53 is denied; except that they say that said Chapter 255, New Jersey Laws of 1934, insofar as relates to the redemption of the bonds issued under its authority, provides as follows:

"14. To provide funds to meet the interest and principal payment requirements for any bonds issued under this act and so long as any bonds issued hereunder shall be outstanding and unpaid there is hereby appropriated and the Treasurer shall in each year set aside for such purpose, sufficient sums to meet the principal and interest requirements for the next ensuing calendar year from the tax collected under and by virtue of the provisions of an act entitled 'An act imposing taxes upon the sale or delivery of

alcoholic beverages and providing for the collection thereof,' approved December fourth, one thousand nine hundred and thirty-three, constituting chapter four hundred thirty-four of the laws of one thousand nine hundred and thirty-three and the several acts amendatory thereof or supplemental thereto, and under and by virtue of any revision thereof or act substitutionary thereof after deducting only the expenses of administering said act or acts.

15. In the event of the receipt by the State of moneys from one of the following sources: (1) the moneys received by the State under the final judgment or decree, whether in the original cause or appeal, of any court of competent jurisdiction in any cause now pending for the collection of transfer inheritance taxes due the State from the estate of a decedent adjudged in said cause to have been a resident of this State, which decedent has already been adjusted by the courts of another State to have been a resident of such other State (2) the moneys received in any such cause in the event of the settlement of such litigation by the State [fol. 73] Tax Commissioner by the acceptance of the principal sum due and the remission of all interest due on all such principal sum in accordance with the provisions of an act entitled 'An act authorizing the State Tax Commissioner to adjust and settle transfer inheritance taxes due the State, where the matter is now in litigation and the question of the domicile of decedent is at issue,' approved July eleventh, one thousand nine hundred and thirty-four, constituting chapter two hundred and forty-nine of the laws of one thousand nine hundred and thirty-four, (3) or an agreed amount to be determined by the Legislature, the Treasurer may apply all or any part of such moneys to the redemption and payment of any bonds (together with interest thereon to date of redemption) theretofore issued and then outstanding under this act.

16. (a) If in any year or at any time funds as hereinabove appropriated necessary to meet interest and principal payments upon outstanding bonds issued under this act be insufficient or are not available, then and in that case there shall be assessed, levied and collected annually in each of the municipalities of the counties of this State a tax on real and personal property upon which municipal taxes are or shall be assessed, levied and collected, sufficient to meet the interest on all outstanding bonds issued herein-

under and on such bonds as it is proposed to issue under this act in the calendar year in which such tax is to be raised and for the payment of bonds falling due in the year following the year for which the tax is levied.

(b) The tax thus imposed shall be assessed, levied and collected in the same manner and at the same time as other taxes upon real and personal property are assessed, levied and collected. The governing body of each municipality shall cause to be paid to the county treasurer of the county in which such municipality is located on or before the fifteenth day of December in each year the amount of tax herein directed to be assessed and levied, and the county treasurer shall pay the amount of said tax to the State Treasurer on or before the twentieth day of December in each year."

[fol. 74] 54. Paragraph 54 is admitted; except that they say that the State of New Jersey, by its statutes and other laws, has provided full, complete and adequate remedy to the Executors for the recovery of inheritance tax erroneously paid by them, or illegally collected by defendants. The pertinent parts of said statutes, are as follows:

(Transfer Inheritance Tax Act)

"15. When any amount of said tax shall have been paid erroneously to the State Tax Commissioner, it shall be lawful for the Comptroller of the Treasury on satisfactory proof rendered to State Tax Commissioner of such erroneous payments, and duly certified by him to the Comptroller, to draw his warrant on the State Treasurer, in favor of the executor, administrator, person or persons who have paid any such tax in error, or who may be lawfully entitled to receive the same, for the amount of such tax so paid in error; provided, that all such applications for the repayment of such tax shall be made within two years from the date of such payment." (Ch. 303, N. J. P. L. 1931, pp. 749, 762).

"24. * * * All amounts becoming due under the provisions of this act shall be paid from the same fund provided in the annual appropriation bill for the payment of refunds to estates pursuant to section fifteen, chapter two hundred and twenty-eight, laws of one thousand nine hundred and nine, as amended, and refunds to counties pur-

suant to chapter two hundred and fifty-eight, laws of one thousand nine hundred and nine. * * *" (Ch. 140, N. J. P. L. 1932, pp. 252-3.)

(Appropriation Act)

"D 17. State Tax Department

Inheritance Tax Division

'Upon approval of the State Tax Commissioner, the Comptroller of the Treasury is hereby authorized and it [fol. 75] shall be his duty to withdraw from the State fund such amounts as shall be required to carry out the provisions of chapter 238, Laws of 1909, and to refund and pay such claims as may be necessary and the State Treasurer shall pay same upon the warrants of said Comptroller, and there is hereby appropriated the amount necessary therefor.'" (Ch. 232, N. J. P. L. 1934, pp. 535, 578, 580.)

The Annual Appropriation Laws of the State of New Jersey, for many years past, have contained the same provision as last above quoted from the Appropriation Act of 1934, and it has been the established practice of the Legislature of the State of New Jersey to include the same provision in each Annual Appropriation Act. All refunds for erroneous or illegal payments of transfer inheritance taxes are paid out of moneys so appropriated; it has been the established practice of the State Tax Commissioner, and his predecessor in office, in the administration of the Transfer Inheritance Tax Laws of New Jersey, to cause to be made refunds, in accordance with the provisions of the statutes, of the amount of any tax found to have been illegally or erroneously paid; it is the established law of the state that the courts of New Jersey will, in circumstances like the present case, compel a refund of taxes erroneously or illegally paid.

55. Paragraph 55 is denied; further answering said paragraph defendants say that the State of New Jersey has provided full, complete and adequate remedy to the Executors for the recovery of inheritance tax erroneously paid by Executors, or illegally collected by defendants, as set forth in paragraph 54; that said suit is not brought against

the defendants individually, but in their representative capacities as officers of the State of New Jersey; the financial resources of said state are ample to pay any refunds of taxes erroneously or illegally paid by the Executors; for the year 1934, the total ratables of real and personal [fol. 76] property in said state (exclusive of property taxed by license, gross receipts, or excise taxes in lieu of all other taxes), was in excess of five billion nine hundred million dollars.

56. Paragraph 56 is denied; further answering said paragraph defendants say that the State of New Jersey has provided full, complete and adequate remedy to the plaintiffs for the recovery of inheritance tax erroneously paid by plaintiffs, or illegally collected by defendants, as set forth in paragraphs 54 and 55.

57. Paragraph 57 is admitted.

58. Paragraph 58 is denied.

59. Paragraph 59 is denied.

60. Paragraph 60 is denied.

61. Paragraph 61 is denied.

62. Paragraph 62 is denied.

63. Paragraph 63 is denied; further answering said paragraph the defendants say that none of the defendants, nor the State of New Jersey, nor any officer of said state, was a party to the suit in which said judgments were entered, and neither of said judgments was ever sued upon or established in any court of New Jersey or of the United States; and neither of said judgments is binding upon these defendants or upon the State of New Jersey.

64. Paragraph 64 is denied; further answering said paragraph the defendants say that plaintiff is not threatened with irreparable injury, because the tax may be paid and recovered back in any amount found to have been illegally or erroneously paid, as set forth in paragraphs 54 and 55; and because the Executors may, at any time within one year from the entry of the judgment in the New Jersey Supreme Court, review the same as a matter or right under [fol. 77] the laws and practice of the State of New Jersey, and a stay may be obtained under conditions approved by

the court; and from any judgment of the Court of Errors and Appeals, if the same may be adverse to the Executors, they may apply for a review thereof by the Supreme Court of the United States, in accordance with the statutes and the practice of that court.

65. Paragraph 65 is denied; further answering said paragraph defendants say that for the reasons stated in paragraph 64 of this answer, plaintiff is not without adequate remedy at law.

Further answering, in lieu of pleas in bar, they say:

First Plea

66. On October 1, 1930 Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance, and Camden Safe Deposit and Trust Company, as Executors under the will of John T. Dorrance, presented their duly verified petition to the Surrogate of Burlington County, New Jersey, praying for the probate of said will and setting forth therein, under oath, that said John T. Dorrance departed this life at his residence in Cinnaminson Township, in the County of Burlington and State of New Jersey, leaving him surviving as his heirs at law and next of kin, certain persons, including his widow and four children, whose post office addresses were Riverton, New Jersey, and plaintiff, a daughter, whose post office address was New York City; pursuant to said petition, said will was admitted to probate, and letters testamentary thereon were issued to the Excecutors by the order of said Surrogate dated October 2, 1930, which order is still in full force and effect.

Said order admitting will to probate and granting letters testamentary thereon to the Executors was an order of a [fol. 78] court of competent jurisdiction under the laws of this State, having jurisdiction over the property of said estate and of the Executors and other parties interested therein, including the plaintiff; said court judicially determined that said decedent, at the time of his death, was domiciled in the county of Burlington and State of New Jersey; said order has not been appealed and is conclusive and final as between the parties to this suit, and cannot be collaterally attacked.

Plaintiff was a party to, and beneficiary under, said proceedings, and was in privity with said Executors therein.

Wherefore, by reason of the premises, the issue of law and of fact as to the domicile of said decedent was adjudged and decreed against the plaintiff.

Second Plea

67. In certain proceedings before the New Jersey Prerogative Court, to-wit, an appeal by said Executors to said court from the assessment of transfer inheritance tax made by the defendant Martin, as State Tax Commissioner of the State of New Jersey, upon said estate, entitled "In the matter of the Appeal of Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the Last Will and Testament of John T. Dorrance, deceased, from the Assessment of the Transfer Inheritance Taxes against the Estate of the said John T. Dorrance, deceased", in which appeal the Executors were the appellants and the said defendant Martin, in his official capacity as State Tax Commissioner of New Jersey, was respondent (the real party in interest being said State of New Jersey) the same cause of action was alleged by the Executors on said appeal and the same grounds for reversal of said assessment were there [fol. 79] urged by the Executors as the plaintiff now alleges in this suit.

Annexed hereto and made part hereof are copies of said petition of appeal and of the answer of said defendant thereto.

The same rights, facts and matters were put in issue by said petition and answer and were adjudicated upon said appeal, or were necessarily involved therein, as are now claimed and alleged by the plaintiff in this suit.

The said cause of action was between the same parties in interest or those in privity with them, as are the parties in interest or those in privity with them in this suit.

Said New Jersey Prerogative Court was a court of competent jurisdiction to hear and determine the alleged cause of action set forth in said appeal, and to hear and determine the rights, facts and matters that were in issue, or necessarily involved, in said appeal.

The conclusions of said court on the merits were filed on February 7, 1934; supplemental conclusions were filed on May 10, 1934; annexed hereto and made part hereof are copies of said conclusions and said supplemental con-

clusions; the final decree of said court was entered on May 11, 1934, wherein and whereby it was ordered, adjudged and decreed as follows:

"It is further ordered, adjudged and decreed that respondent in determining the clear market value of the property of the estate of John T. Dorrance, deceased, allow further deductions, (including additional counsel fees and executors' commissions), in the amount of $533,784.81, as allowed by the Orphans Court of Burlington County, New Jersey, and

It is further ordered, adjudged and decreed that the assessment of transfer inheritance taxes as made by respondent on October 10, 1932, amounting to $12,247,333.52 upon [fol. 80] the transfer of the property of said John T. Dorrance, deceased, as that of a resident decedent, subject to the above modifications, be and the same in all other respects is hereby affirmed."

A copy of said decree is annexed hereto and made part hereof.

Plaintiff was in privity with said Executors in said proceeding.

In and by said final decree of said New Jersey Prerogative Court the issues of law and of fact raised by said appeal and now sought to be raised by the plaintiff in this suit, were adjudged and decreed against the plaintiff and in favor of the defendant, J. H. Thayer Martin, and in favor of the State of New Jersey, the real party in interest therein, and the real party in interest in this suit.

Third Plea

68. In certain proceedings before the New Jersey Supreme Court, to-wit, a writ of certiorari allowed by said court, on application of said Executors to review the decree of the New Jersey Prerogative Court affirming (with modifications) the assessment of transfer inheritance tax, made by the defendant, J. H. Thayer Martin, as State Tax Commissioner of the State of New Jersey, upon the estate of John T. Dorrance (the said proceedings being entitled, "Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the Last Will and Testament of John T. Dorrance, Deceased, Prosecutors, vs. J. H.

Thayer Martin, State Tax Commissioner of the State of New Jersey, Respondent"), in which writ said Executors were the prosecutors and the said defendant Martin, in his [fol. 81] official capacity as State Tax Commissioner of New Jersey, was respondent (the real respondent party in interest being said State of New Jersey) the same cause of action was alleged by the Executors on said writ and the same grounds for reversal of said assessment and decree were urged there by the Executors as plaintiff now alleges in this suit; annexed hereto and made part hereof is a copy of the Reasons filed by the Executors as prosecutors of said writ of certiorari.

The same rights, facts and matters were put in issue by the Reasons and other proceedings on said writ of certiorari, and were adjudicated upon said writ, or were necessarily involved therein, as are now claimed and alleged by the plaintiff in this suit.

The said cause of action was between the same parties in interest, or those in privity with them, as are the parties in interest, or those in privity with them, in this suit.

Said New Jersey Supreme Court was a court of competent jursdiction, to hear and determine the alleged cause of action as set forth in said writ and to hear and determine the rights, facts and matters that were in issue, or necessarily involved, in said writ; the decision of said court was filed on the merits of said alleged cause of action on February 8, 1935; annexed hereto and made part hereof is a copy of said decision; the final judgment of said court was entered February 11, 1935, affirming the said decree of the Prerogative Court sustaining said assessment (as modified), and dismissing said writ; annexed hereto and made part hereof is a copy of said final judgment.

Plaintiff was in privity with said Executors in said proceedings.

In and by said final judgment of said New Jersey Supreme Court, the issues of law and of fact raised by said [fol. 82] writ, and now sought to be raised by the plaintiff in this suit, were adjudged against the plaintiff and in favor of the defendant, J. H. Thayer Martin, and in favor of the State of New Jersey, the real party in interest therein, and the real party, defendant in this suit.

Fourth Plea.

69. On October 1, 1930, said Executors, as executors under the will of John T. Dorrance, presented their duly verified petition to the Surrogate of Burlington County, New Jersey, praying for the probate of said will and setting forth therein, under oath, that said John T. Dorrance departed this life at his residence in Cinnaminson Township, in the County of Burlington and State of New Jersey, leaving him surviving as his heirs at law and next of kin, certain persons, including his widow and four children, whose post office addresses were Riverton, New Jersey, and the plaintiff, a daughter; pursuant to said petition, said will was admitted to probate, and letters testamentary thereon were issued to the Executors, by the order of said Surrogate, dated October 2, 1930, which order is still in full force and effect.

Upon the issuance of said letters testamentar, said Executors filed with the said Surrogate of Burlington County a sworn statement and deposition that they would exhibit into the Surrogate's Office of the County of Burlington, at or before the expiration of three calendar months, a true and perfect inventory of all and singular the goods and chattels, rights and credits of said deceased, that have or shall come to their knowledge or possession, or to the possession of any other person for their use; that they shall comply with the provisions of all federal and state laws concerning inheritance taxes; that they shall well and truly perform their duties as such executors by first paying the [fol. 83] debts of the deceased and then the legacies therein specified, so far as the assets of the estate could thereunto extend and render a true and just account, within twelve calendar months or when thereunto lawfully required.

Thereafter, said Executors filed with the Surrogate of Burlington County an inventory and appraisal of said estate on or about April 17, 1931; on or about October 15, 1931, said Executors filed their petition for first accounting of said estate in the Burlington County Orphans' Court, a court of competent jurisdiction under the laws of the State of New Jersey, and said accounting was allowed by order of said court on November 5, 1931; on or about November 5, 1932, said Executors filed their second intermediate accounting of said estate in said Burlington County

Orphans' Court, which was allowed by order thereof entered November 25, 1932.

All proceedings for the administration of the estate up to the present time have been had by the Executors before said court of Burlington County and the Executors, under the orders of said court, have partially administered and distributed the said estate and have paid certain legacies given by the will, and have obtained and filed in said court, refunding bonds and releases for such payments, and have made certain payments on account of the trusts set up by said will, including payments of 10,000.00 per month to plaintiff, continuously since the probate of said will, and said Executors have received large sums of money as allowances for executors' commissions and counsel fees.

The estate of said decedent is still in the course of administration by said Orphans' Court of Burlington County; said will has never been offered for probate, and no letters of administration or testamentary have ever been granted in the Commonwealth of Pennsylvania, or in any other jurisdiction, except said County of Burlington.

[fol. 84] Plaintiff was a party to said proceedings and was beneficiary thereof to the extent of many thousands of dollars.

On April 6, 1931, a return, and on August 17, 1931, an amended and corrected return, were filed by and in behalf of the Executors as required by the statutes of the State of New Jersey and the Regulations of the Tax Department of said state, stating under oath that said John T. Dorrance was late of Burlington County, State of New Jersey; said estate, as shown in said amended and corrected return, consisted entirely of personal property, made up of bank deposits, bonds, stocks, accounts and notes receivable and miscellaneous items amounting to the total sum of One hundred fifteen, million, one hundred twenty-one thousand five hundred eighteen dollars and ninety-two cents; from which deductions were claimed, amounting to Three million, two hundred seventy-nine thousand four hundred sixty-four dollars and thirty-four cents; the bonds, certificates of stock and other evidence of title to said personal property were then, and still are, located in the State of New Jersey.

Said estate was duly appraised on October 16, 1931, in the net sum of One Hundred twelve million, fifty-five thousand, four hundred dollars and eighty-six cents.

Prior to the making of any assessment of taxes, the Executors appeared before the Comptroller of the State of New Jersey and the State Tax Commissioner, respectively, and claimed that the said John T. Dorrance, at the time of his death, was domiciled in the Township of Cinnaminson, county of Burlington and State of New Jersey; and in support of such claim submitted certified copies of the will and the proceedings for probate, and numerous statements, letters and other documents and records; after consideration of such proofs and documents, the comptroller, on May 13, [fol. 85] 1931, found as follows:

"After a careful consideration of all available data, including oral statements submitted by you (referring to the proctor for the plaintiffs) during your recent appearance, the Department has concluded that the legal domicile of the decedent at the date of his death and for many years prior thereto was Cinnaminson, Burlington County, New Jersey."

and thereafter, on October 17, 1931, the State Tax Commissioner served upon said Executors the assessment for inheritance taxes.

On or about December 12, 1931, said Executors filed with defendant, J. H. Thayer Martin, as State Tax Commissioner, their petition reciting the proceedings in Pennsylvania for the assessment and collection under the laws of that state, of transfer inheritance taxes upon the estate of said John T. Dorrance, then being administered by said Executors under the jurisdiction of the Orphans' Court of Burlington County, New Jersey; that said Executors had submitted to said defendant and his predecessor certain evidence as to the domicile of said John T. Dorrance at the time of his decease; and that said Executors had since the filing of said assessments, obtained a large amount of information, facts and evidence relating to and bearing upon the domicile of said John T. Dorrance at the time of his decease, which was not in their possession at the time of the filing of said assessments, which they desired to submit and present before the final determination of said assessments, and praying that said assessments of October 17, 1931, be opened and set aside and cancelled and for nothing holden and that the proceedings thereon be opened and permission granted to said Executors to submit and present to said de-

fendant further and additional information, facts and evi-
[fol. 86] dence relating to and bearing upon the domicile of said John T. Dorrance at the time of his decease, and other information, facts and testimony relating to and bearing upon the estate of said John T. Dorrance, deceased.

Pursuant to said petition said defendant, on December 12, 1931, ordered that said assessment of October 17, 1931, be opened for the purposes set forth in said petition and in accordance with the prayer thereof.

In making said order said defendant relied upon the representations and good faith of said Executors and upon the truth and sincerity of the purposes stated in their petition for such opening and cancelling of said assessments and believed that he could safely grant said petition without injury or prejudice to himself or the State of New Jersey. It was not until said Executors, after the date thereof, submitted to said defendant, as proof of their claim of decedent's domicile in the Commonwealth of Pennsylvania, then for the first time made by them, a copy of the decision and decree of the Supreme Court of Pennsylvania made September 26, 1932, that said defendant discovered that the real intent and purpose of said Executors, in petitioning for the opening and cancellation of said assessments, was to postpone the effective date of the levy of taxes thereunder and the collection of said taxes thereunder until after the decision and decree of the Supreme Court of Pennsylvania to enable said Executors to plead said decree as a bar under the Constitution of the United States to any assessments made by the State of New Jersey under its inheritance tax laws.

Thereupon, on October 10, 1932, said defendant, State Tax Commissioner, reinstated said assessment and served same upon said Executors.

[fol. 87] By withholding and concealing, or remaining silent upon said true intent and purpose of said petition to open and cancel said assessments, said Executors fraudulently and designedly misled and deceived said defendant into making said order of December 12, 1931, and fraudulently and designedly induced him to change his position and open and cancel said assessments to the prejudice of the State of New Jersey, and to the profit and advantage of plaintiff.

Plaintiff was in privity with said Executors in all of said proceedings.

Wherefore, by reason of the premises, plaintiff is estopped from asserting or maintaining that said John T. Dorrance, at the time of his death, was domiciled in the Commonwealth of Pennsylvania; and she is estopped from asserting or maintaining that by reason of the said decision of the Supreme Court of Pennsylvania said John T. Dorrance was, at the time of his death, domiciled in the Commonwealth of Pennsylvania; and she is estopped from asserting or maintaining that the said assessments are erroneous, illegal and void for the reasons alleged in the bill of complaint.

Fifth Plea

70. The Register of Wills of Delaware County, Pennsylvania, was without jurisdiction to make an appraisement as alleged in the bill of complaint, under the laws of Pennsylvania, for transfer inheritance taxes on the estate of said John T. Dorrance, and the Orphans' Court of Delaware County, Pennsylvania and the Supreme Court of Pennsylvania, were without jurisdiction to hear or determine any proceedings relating thereto under the laws of Pennsylvania.

In the contest of said appraisement and in the conduct of the appeal therefrom and from the decree of the Orphans' [fol. 88] Court of Delaware County, Pennsylvania, it was the duty of said Executors, and necessary to the adequate protection of the rights of said Executors and of the parties interested in said estate, including plaintiff, for the purpose of obtaining, if necessary, the review of the decree of the Supreme Court of Pennsylvania by the Supreme Court of the United States, that said Executors should properly present to said courts of the State of Pennsylvania the claim that the assessment of the transfer inheritance taxes upon said estate violated the rights of said Executors and the plaintiff under the Constitution of the United States; said Executors failed and neglected to properly present to said courts of the State of Pennsylvania the said claim; and solely by reason of said failure and neglect, said Executors were denied a review of the decision of the Supreme Court of Pennsylvania, in and by the Supreme Court of the United States.

Plaintiff was in privity with said Executors in said proceedings.

Wherefore, by reason of the premises, the plaintiff is in laches and is barred and estopped from alleging or maintaining in this suit that the domicile of the said decedent, at the time of his death, was in the Commonwealth of Pennsylvania, and from alleging or maintaining in this suit that the said decision of the Supreme Court of Pennsylvania is binding upon said Executors or the plaintiff, or upon the defendants, or upon this court.

Sixth Plea

71. The conclusions of the New Jersey Prerogative Court adjuding that John T. Dorrance at the time of his death was domiciled in the State of New Jersey, were filed on February 7, 1934; and his supplemental conclusions relating solely [fol. 89] to certain claimed deductions, were filed on May 10, 1934, and the decree of said court on said conclusions and supplemental conclusions was filed on May 11, 1934.

Plaintiff did not, on the filing of said conclusions, nor on the entry of said final decree, or promptly thereafter apply for injunction to this court; but voluntarily acquiesced in the action of said Executors who applied to and obtained from the New Jersey Supreme Court a writ of certiorari to review said final decree.

Plaintiff was in privity with said Executors in said proceedings.

Wherefore, by reason of the premises the plaintiff is in laches and is now barred from further prosecution of this suit.

Further Answering, by way of defense in point of law arising upon the face of the bill of complaint, defendants say:

72. The bill of complaint does not allege a cause of action against the defendants, or against any or either of them.

73. Plaintiff has an adequate remedy at law under the laws of the State of New Jersey.

74. An injunction, if granted in accordance with the prayer of the bill of complaint, would violate section 265 of the Federal Judicial Code (Sec. 379, Title 28, U. S. Code), in that the same would stay proceedings in the state courts, to-wit, proceedings to collect the taxes due and owing from the plaintiffs to the State of New Jersey; as

adjudged and decreed by the final decree of the New Jersey Prerogative Court entered May 11, 1934, in the sum of $12,247,333.52, which said final decree was affirmed by the New [fol. 90] Jersey Supreme Court by final judgment entered February 11, 1935.

75. An interlocutory injunction, if granted in accordance with the prayer of the bill of complaint, by this court as constituted by the order of the court entered herein April 2, 1935, is not authorized by Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code) because this suit is not brought to suspend or restrain the enforcement, operation or execution of any statute of the State of New Jersey by restraining the action of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of said state.

76. This court has no jurisdiction of the bill of complaint because the suit is brought by a citizen of another state, to wit, the State of Rhode Island, as plaintiff, against the State of New Jersey, in violation of the Eleventh Amendment to the Constitution of the United States.

77. The order of the Surrogate of Burlington County admitting the will of the decedent to probate and granting letters testamentary thereon to said Executors was an order of a court of competent jurisdiction under the laws of this State, having jurisdiction over the property of said estate and of the plaintiff and other parties interested therein; said court judicially determined that said decedent, at the time of his death, was domiciled in the County of Burlington and State of New Jersey; said order has not been appealed and is conclusive and final as between the parties to this suit.

Plaintiff was a party to, and beneficiary of said proceedings and was in privity with said Executors therein.

[fol. 91] 78. In the proceedings before the New Jersey Prerogative Court (mentioned in paragraphs 42, 43 and 44 of the bill of complaint), to wit, an appeal by said Executors to said court from the assessment of transfer inheritance tax made by the defendant, Martin, as Tax Commissioner of the State of New Jersey, upon the estate of John T. Dorrance, in which appeal said Executors were the ap-

pellants and the said defendant, Martin, in his official capacity as State Tax Commissioner of New Jersey, was respondent (the real respondent party in interest being said State of New Jersey) the same cause of action was alleged by said Executors on said appeal and the same rights, facts and matters were in issue and were adjudicated upon said appeal, or were necessarily involved therein, as are now claimed and alleged by the plaintiff in this suit.

The said cause of action was between the same parties in interest, or those in privity with them, as are the parties in interest, or those in privity with them, in this suit.

Said New Jersey Prerogative Court was a court of competent jurisdiction to hear and determine the alleged cause of action set forth in said appeal, and to hear and determine the rights, facts and matters that were in issue, or necessarily involved, in said appeal.

Plaintiff was in privity with said Executors in said proceedings.

In and by said final decree of said New Jersey Prerogative Court the issues of law and of fact raised by said appeal and now sought to be raised by the plaintiff in this suit were adjudged and decreed against the plaintiff and in favor of the defendant, J. H. Thayer Martin, and in favor of the State of New Jersey, the real party in interest therein and the real party in interest in this suit.

[fol. 92] 79. In the proceedings before the Supreme Court of the State of New Jersey (mentioned in paragraph 43 of the bill of complaint), to wit, a writ of certiorari allowed by said court, on application of said Executors to review the decree of the New Jersey Prerogative Court, affirming (with modifications) the assessment of transfer inheritance tax made by the defendant, J. H. Thayer Martin, as State Tax Commissioner of the State of New Jersey, upon the estate of John T. Dorrance, in which writ said Executors were the prosecutors and the said defendant Martin, in his official capacity as State Tax Commissioner of New Jersey, was respondent (the real respondent party in interest being said State of New Jersey) the same cause of action was alleged by said Executors on said writ and the same rights, facts and matters were put in issue and were adjudicated, upon said writ, or were necessarily involved therein, as are now claimed and alleged by the plaintiff in this suit.

The said cause of action was between the same parties in interest, or those in privity with them, as are the parties in interest, or those in privity with them, in this suit.

Said New Jersey Supreme Court was a court of competent jurisdiction, to hear and determine the alleged cause of action, as set forth in said writ, and to hear and determine the rights, facts and matters that were in issue or necessarily involved in said writ.

Plaintiff was in privity with said Executors in said proceedings.

In and by the final judgment of said New Jersey Supreme Court, entered February 11, 1935 (mentioned in paragraph 43 of the bill of complaint) the issues of law and of fact raised by said writ and now sought to be raised by the plaintiff in this suit, were adjudged against the plaintiff and in favor of the defendant, J. H. Thayer Martin, and in favor of the State of New Jersey, the real party in interest [fol. 93] therein, and the real party defendant in this suit.

80. By virtue of the proceedings for the probate of the will of the decedent and the granting of letters testamentary thereon, and by virtue of the opening of the assessments of transfer inheritance tax on December 12, 1931, at the request of said Executors as alleged in the bill of complaint, the plaintiff is estopped from asserting or maintaining that the decedent, at the time of his death, was domiciled in the Commonwealth of Pennsylvania, and from asserting or maintaining that by reason of the decision of the Supreme Court of Pennsylvania (as alleged in the bill of complaint) the said decedent at the time of his death was domiciled in the Commonwealth of Pennsylvania, and from asserting or maintaining that the said assessments as made by the defendant Martin, as State Tax Commissioner of the State of New Jersey, are erroneous, illegal and void, for the reasons alleged in the bill of complaint.

Plaintiff was a party to, and beneficiary under, said proceedings, and was in privity with said Executors therein.

81. The Register of Wills of Delaware County, Pennsylvania, was without jurisdiction to make an appraisement as alleged in the bill of complaint, under the laws of Pennsylvania, for transfer inheritance taxes on the estate of the decedent, and the Orphans' Court of Delaware County, New Jersey, and the Supreme Court of Pennsylvania, were

without jurisdiction to hear and determine any proceedings relating thereto under the laws of Pennsylvania.

In the contest of said appraisement and in the conduct of the appeal therefrom and from the decree of the Orphans' Court of Delaware County, Pennsylvania, as alleged in the bill of complaint, it was the duty of said Executors and [fols. 94-105] necessary to the adequate protection of the rights of the plaintiff and of other parties interested in said estate for the purpose of obtaining, if necessary, the review of the decree of the Supreme Court of Pennsylvania by the Supreme Court of the United States; that said Executors should properly present to said courts of the State of Pennsylvania the claim that the assessment of the transfer inheritance taxes upon said estate violated the rights of the plaintiff under the Constitution of the United States; said Executors failed and neglected to properly present to said courts of the State of Pennsylvania the said claim, and solely by reason of said failure and neglect, said Executors were denied a review of the decision of the Supreme Court of Pennsylvania, in and by the Supreme Court of the United States.

Plaintiff was in privity with said Executors in said proceeding.

82. On the filing of the conclusions of the New Jersey Prerogative Court, and on the entry of the final decree therein, as alleged in the bill of complaint, the plaintiff did not promptly thereafter apply to this court for an injunction, but acquiesced in the action of said Executors who voluntarily applied to and obtained from the Supreme Court of the State of New Jersey a writ of certiorari to review said final decree.

Plaintiff was in privity with said Executors in said proceedings.

Wherefore, defendants jointly and severally pray that the complaint be dismissed with costs.

David T. Wilentz, Attorney General of New Jersey, Solicitor for Defendants. Duane E. Minard, George S. Hobart, Counsel.

[fol. 106] EXHIBIT TO ANSWER

New Jersey Prerogative Court

Petition of Appeal by Plaintiffs to Prerogative Court

On Appeal

Amended Petition of Appeal

In the matter of the appeal of Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the last will and testament of John T. Dorrance, deceased, from the assessment of the transfer inheritance taxes against the estate of the said John T. Dorrance, deceased

To His Honor, Luther A. Campbell, Ordinary of the State of New Jersey:

The amended petition of Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the last will and testament of John T. Dorrance, deceased, respectfully shows that:

1. John T. Dorrance died on September 21st, 1930, leaving a last will in which he appointed your Petitioners as his executors and in which he directed them, on penalty of forfeiting their appointment, to make application within thirty days of his death for the probate of his said will either before the Surrogate of Burlington County, New Jersey, or the Ordinary of the State of New Jersey.

2. On October 2, 1930, your petitioners, pursuant to said directions, probated the said will before the Surrogate of [fol. 107] Burlington County, New Jersey, and on the same day were granted letters testamentary thereon.

3. On April 6, 1931, and on August 17, 1931, your petitioners, being then advised that the said John T. Dorrance was at his death domiciled in the State of New Jersey, filed with the Department of the Comptroller of the Treasury, Transfer Inheritance Tax Bureau of the State of New Jer-

sey, inheritance tax returns for the said estate of John T. Dorrance as if the estate of a resident decedent.

4. On April 21, 1931, the Commonwealth of Pennsylvania, by its agent, the Register of Wills of Delaware County, Pennsylvania, claiming that John T. Dorrance at his death was domiciled in Radnor Township, Delaware County, Pennsylvania, and assuming to act by virtue of the provisions of the Act of Assembly of Pennsylvania, approved June 20, 1919, (P. L. 521) its amendments and supplements, made an assessment of transfer inheritance taxes against the said estate of John T. Dorrance in the sum of $31,465,200.00, which said assessment was based on the value of all of the assets of the said estate of John T. Dorrance at his death, consisting principally of intangible personal property.

5. On October 17, 1931, the State Tax Commissioner of the State of New Jersey, claiming that John T. Dorrance at his death was domiciled in Burlington County, New Jersey, and assuming to act under the provisions of the Transfer Inheritance Tax Act of New Jersey of April 20, 1909, its amendments and supplements, made an assessment against the said estate of John T. Dorrance in the sum of $12,247,333.52, with an additional assessment in the sum of $4,521,143.90 on account of certain contingent remainders, both of which assessments were based on the value of substantially [fol. 108] all of the assets of the said John T. Dorrance at his death, including all the aforesaid intangible personal property.

6. On December 12, 1931, the said State Tax Commissioner opened the two assessments so made and filed by him as aforesaid and gave permission to your Petitioners to submit to the Transfer Inheritance Tax Bureau, State of New Jersey, additional information relating to the domicile of the said John T. Dorrance, which additional information your Petitioners subsequently submitted to the said Bureau.

7. On February 15, 1932, the Orphans' Court of Delaware County, Pennsylvania, on the appeal of your Petitioners, duly entered its decree adjudging that the said John T. Dorrance at his death was domiciled in New Jersey and setting aside the aforesaid assessment of Pennsylvania transfer inheritance tax. From that decree the Com-

monwealth of Pennsylvania appealed to the Supreme Court of Pennsylvania; and that court on September 26, 1932, duly entered its decree reversing the said decree of the Orphans' Court, and adjudging that said John T. Dorrance at his death was domiciled in Pennsylvania, and reinstating the said assessment of Pennsylvania transfer inheritance tax subject to correction of the assessed value of the assets on which it was based. On December 20, 1932, the Supreme Court of Pennsylvania duly entered its further decree directing the Orphans' Court to enter a decree assessing and imposing the said Pennsylvania transfer inheritance tax in the sum of $17,437,655.26, based on the value of all the assets of said John T. Dorrance at his death, including all the aforesaid intangible personal property; and on December 22, 1932, the Orphans' Court duly entered its decree as so directed. On January 10, 1933, the Supreme Court of Pennsylvania, on reargument of said cause before it, duly entered its further decree refusing to modify its said previ- [fol. 109] ous decrees. On March 13, 1933, the Supreme Court of the United States denied your petitioners' petition for a writ of certiorari to review the said decrees of the Supreme Court of Pennsylvania.

8. Your petitioners are advised that the place of domicile of said John T. Dorrance at his death is a question of law for judicial determination, and that this question has been determined by the Supreme Court of Pennsylvania, as aforesaid; and your petitioners, being so advised, believe, and therefore aver, that said John T. Dorrance at his death was domiciled in Pennsylvania and not in New Jersey.

9. On October 10, 1932, the State Tax Commissioner of the State of New Jersey, again claiming that John T. Dorrance at his death was domiciled in Burlington County, State of New Jersey, and assuming to act under the provisions of the Transfer Inheritance Tax Act of New Jersey, of April 20, 1909, its amendments and supplements, made new assessments against the said estate of John T. Dorrance in the same sums as theretofore, to wit, $12,247,333.52 and $4,521,143.90, both of which assessments were again based on the value of substantially all of the assets of the said John T. Dorrance at his death, including all the aforesaid intangible personal property.

Neither of said assessments have been accepted or agreed to by your petitioners.

10. The said State Tax Commissioner in determining the clear market value of the property of the said John T. Dorrance, deceased, allowed as deductions Two Hundred and Fifty Thousand Dollars ($250,000) for fees of attorneys of the Executors of the Estate of John T. Dorrance, deceased. Because of extended necessary litigation relating to the Estate of said John T. Dorrance, deceased, the total amount of fees paid and to be paid to the attorneys of the [fol. 110] executors of the estate of John T. Dorrance, deceased, for their services in connection with said necessary litigation and the settlement of the said estate will exceed the sum of Four Hundred and Fifty Thousand Dollars ($450,000), which is a proper deduction in determining the clear market value of the said estate.

11. The said State Tax Commissioner in determining the clear market value of the said property of the said John T. Dorrance, deceased, allowed as deductions commissions of your petitioners as executors in the amount of One Million One Hundred Sixty-six Thousand Two Hundred and Fifteen Dollars and Nineteen Cents ($1,166,215.19). Prior to the making and filing of the said assessment by the said State Tax Commissioner as aforesaid, there had been allowed and paid to your petitioners, executors as aforesaid, as commissions on the corpus of the said estate the sum of Nine Hundred Thousand Dollars ($900,000), and since the making and filing of the said assessment there has been allowed and paid to your petitioners, executors as aforesaid, as commissions upon the corpus of the Estate of the said John T. Dorrance, deceased, the additional sum of Six Hundred Thousand Dollars ($600,000), and the total amount allowed and paid to your petitioners, executors as aforesaid, as commissions upon the corpus of said estate is the sum of One Million Five Hundred Thousand Dollars ($1,500,000), which is a proper deduction in determining the clear market value of the said estate.

12. The Board for the Assessment and Revision of Taxes of the County of Delaware in the Commonwealth of Pennsylvania made assessments against the estate of the said John T. Dorrance, deceased, for the sum of Four Hundred Thousand Dollars ($400,000) for each of the years 1926, 1927, 1928, 1929 and 1930 for the personal property taxes of [fol. 111] the said John T. Dorrance, deceased, in Pennsylvania for said years, besides interest on said amounts of

personal property taxes from the respective dates when the same were payable.

Said personal property taxes for the years 1926, 1927, 1928 and 1929 so assessed as aforesaid, and such proportion of said personal property tax for the year 1930 so assessed as aforesaid as the elapsed portion of the year 1930 up to the date of the death of the said John T. Dorrance on September 21st, 1930, bears to the full calendar year 1930, if said taxes shall be finally determined to be valid claims against the estate of the said John T. Dorrance, deceased, are debts of the decedent owing at the time of his decease, and are therefore proper deductions in determining said clear market value of said property of the estate of the said John T. Dorrance, deceased.

13. Your petitioners are advised and believe, and therefore aver, that the said two assessments of transfer inheritance taxes made and filed by the State Tax Commissioner of New Jersey on October 10, 1932, are erroneous, illegal and void, insofar as they are based on the value of intangible personal property belonging to said John T. Dorrance, on the following grounds:

(a) Said assessments are not authorized by the said Transfer Inheritance Tax Act of New Jersey of April 20, 1909, its amendments and supplements, in that said John T. Dorrance at his death was not domiciled in New Jersey.

(b) Said Transfer Inheritance Tax Act of New Jersey of April 20, 1909, its amendments and supplements, if authorizing said assessments, (which your petitioners deny) deprive your petitioners of their property without due process of law in contravention of the XIV Amendment to the Constitution of the United States, in that the said John T. Dorrance at his death was not domiciled in New Jersey.

[fol. 112] (c) Said assessments deprive your Petitioners of their property without due process of law in contravention of the XIV Amendment to the Constitution of the United States in that the said John T. Dorrance at his death was not domiciled in the State of New Jersey.

(d) Said assessments are repugnant to the provision of Section 1, Article IV of the Constitution of the United States in that they fail to give full faith and credit to the afore-

said decree of the Supreme Court of Pennsylvania, entered September 26th, 1932, supplemented by said order of the Supreme Court of the Commonwealth of Pennsylvania, dated December 20th, 1932, and affirmed by its said order of January 10th, 1933, Docket No. 41 January Term 1932, Estate of John T. Dorrance, deceased, Appeal to the Commonwealth of Pennsylvania, adjudging that said John T. Dorrance at his death was domiciled in Pennsylvania and not in New Jersey, a copy of which decree, orders and docket entries relative thereto, duly exemplified in accordance with the Act of Congress, is hereto attached as a part of this petition.

14. Your petitioners are further advised and believe and therefore aver that even if the said John T. Dorrance shall be finally determined to have been domiciled in New Jersey at the time of his decease, said assessments so made by said State Tax Commissioner of the State of New Jersey are erroneous, for the following additional reasons:

(a) Because the said State Tax Commissioner in determining the clear market value of the property of the said John T. Dorrance, deceased, did not take into consideration and allow as deductions, as required by the said Transfer Inheritance Tax Law of the State of New Jersey, assessments against the estate of the said John T. Dorrance, deceased, by the Board for the Assessment and Revision of Taxes of the County of Delaware, in the Com- [fol. 113] monwealth of Pennsylvania, for the sum of Four Hundred Thousand Dollars ($400,000) for each of the years 1926, 1927, 1928, 1929 and 1930 for the personal property taxes of the said John T. Dorrance. deceased, in Pennsylvania for said years, besides interest on said amounts of personal property taxes from the respective dates when the same were payable, and which said personal property taxes for the years 1926, 1927, 1928 and 1929 so assessed as aforesaid, and such proportion of said personal property tax for the year 1930 so assessed as aforesaid as the elapsed portion of the year 1930 up to the date of the death of the said John T. Dorrance on September 21st, 1930 bears to the full calendar year 1930, if said taxes shall be finally determined to be valid claims against the estate of the said John T. Dorrance, deceased, are debts of the decedent owing at the time

of his decease and are, therefore, proper deductions in determining said clear market value of the said property of the estate of the said John T. Dorrance, deceased.

(b) Because the said State Tax Commissioner in determining the clear market value of the property of the said John T. Dorrance, deceased, did not take into consideration and allow as deductions as required by the said Transfer Inheritance Tax Law of the State of New Jersey, fees of the attorneys of the Executors of the said estate in excess of Two Hundred and Fifty Thousand Dollars ($250,000), which fees paid and to be paid to said attorneys, because of extended necessary litigation relating to the estate of the said John T. Dorrance, deceased, will greatly exceed the sum of Two Hundred and Fifty Thousand Dollars ($250,000), and will amount at least to the sum of Four Hundred and Fifty Thousand Dollars ($450,000), and are proper deductions in determining the said clear market value of said property instead of the said sum of Two Hundred and [fol. 114] Fifty Thousand Dollars ($250,000) attorneys' fees allowed as a deduction by said State Tax Commissioner.

(c) Because the said State Tax Commissioner in determining the clear market value of the said property of the said John T. Dorrance, deceased, did not take into consideration and allow as deductions, as required by the said Transfer Inheritance Tax Law of the State of New Jersey, fees and commissions of your petitioners as executors, allowed by the Orphans' Court of Burlington County, New Jersey, upon the settlement of the First and Second Accounts of your petitioners as executors as aforesaid before said Court, amounting to a total of One Million Five Hundred Thousand Dollars ($1,500,000) which have been paid to your petitioners as executors as aforesaid, and are proper deductions in determining the said clear market value of said property.

(d) Because the said State Tax Commissioner in determining the said clear market value of the said property of the said John T. Dorrance, deceased, did not take into consideration and allow as deductions, as required by the Transfer Inheritance Tax Law of the State of New Jersey, the amount of the transfer inheritance taxes assessed

against the estate of the said John T. Dorrance, deceased, in the Commonwealth of Pennsylvania, as aforesaid, amounting to $17,437,655.26, payable to the said Commonwealth of Pennsylvania, which said assessment was based on the value of all of the assets of the said John T. Dorrance at his death, including all of the intangible personal property included by the said State Tax Commissioner of the State of New Jersey in his said assessment.

15. Your petitioners have never agreed to or accepted the said additional assessment made and filed by the State Tax Commissioner of the State of New Jersey on October 10th, 1932, as aforesaid, amounting to the sum of $4,521,143.90, and the same is not now due or payable.

[fol. 115] 16. Your petitioners are dissatisfied with the said two assessments of said transfer inheritance taxes so made and filed by said State Tax Commissioner of the State of New Jersey as aforesaid.

Your petitioners therefore appeal from the said assessment of the transfer inheritance tax made and filed by the said State Tax Commissioner of the State of New Jersey on October 10th, 1932, upon the estate of the said John T. Dorrance, deceased, amounting to the sum of $12,247,333.52, and from the whole thereof, and from the said additional assessment made and filed by the said State Tax Commissioner on October 10th, 1932, upon the estates in expectancy which are contingent and defeasible under the provisions of the last will and testament of the said John T. Dorrance, deceased, amounting to the sum of $4,521,143.90, and from the whole thereof, and pray that this Honorable Court will review the said assessments so made and filed by the said State Tax Commissioner on October 10th, 1932, as aforesaid, and that the said assessments be reversed, set aside and for nothing holden.

Dated, March 13, 1933.

Ether M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance, Camden Safe Deposit and Trust Company, Executors of the Last Will and Testament of John T. Dorrance, Deceased, Appellants. John Milton, of Counsel, with Appellants. Wm. D. Lippincott, Proctor for Appellants.

[fol. 116]

STATE OF NEW JERSEY,
County of Camden, ss.:

William D. Lippincott, being duly sworn according to law, on his oath saith: That he is the Proctor of Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the last will and testament of John T. Dorrance, deceased, and that he is the agent of the said Executors, duly authorized by the said Executors to execute the foregoing petition and to make the affidavit in this behalf; that he has read the foregoing petition and that the matters and things therein set forth and contained are true to the best of his knowledge, information and belief.

William D. Lippincott.

Subscribed and sworn to before me this fourteenth day of March, A. D. 1933.

Willard F. Lippincott, Master in Chancery of New Jersey.

[fol. 117] EXHIBIT TO ANSWER

NEW JERSEY PREROGATIVE COURT

On Appeal

In the Matter of the Appeal of Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the last will and testament of John T. Dorrance, deceased, from the assessment of the transfer inheritance taxes against the estate of the said John T. Dorrance, Deceased.

Answer to Petition of Appeal

Respondent, J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, answering the amended petition of appeal herein, says:

1. Paragraphs 1, 2 and 3 are admitted.

2. Respondent is without knowledge sufficient to enable him to admit the averments contained in paragraph 4, but is informed that they are untrue.

3. Paragraphs 5 and 6 are admitted.

4. Respondent is without knowledge sufficient to enable him to admit the averments contained in paragraph 7, but is informed that they are true.

5. Paragraph 8 is denied.

6. Paragraph 9 is admitted.

7. Paragraph 10 is denied, except that respondent admits that in determining the clear market value of the [fol. 118] property of said decedent he allowed a deduction of $250,000 for fees of attorneys.

8. Paragraph 11 is denied, except that respondent admits that in determining the correct market value of the property of said decedent he allowed as deductions, commissions for the petitioners as executors in the sum of $1,166,215.19.

9. Paragraph 12 is denied, except that respondent has no knowledge or information sufficient to form a belief as to the averment that the Board for the Assessment and Revision of Taxes of the County of Delaware in the Commonwealth of Pennsylvania made an assessment against the estate of said decedent for the sum of $400,000 in each of the years 1926 to 1930, inclusive, for the personal property taxes of said decedent in Pennsylvania for said years, besides interest, as therein alleged.

10. Paragraphs 13, 14, 15 and 16 are denied.

Respondent, for his answer in lieu of plea, says:

11. Said decedent, John T. Dorrance, died September 21, 1930, at a house in the Township of Cinnaminson, County of Burlington, and State of New Jersey, recited and described in his last will and testament as his residence. Said will appointed the petitioners as executors thereof, and ordered and directed that said will be probated before the Surrogate of the County of Burlington, or the Ordinary of the State of New Jersey, within thirty days after the date of his decease, on pain of forfeiture of executorship to any one or more of said executors failing or refusing to do so.

12. Petitioners presented their duly verified petition, as executors under said will, to the Surrogate of Burlington

County, New Jersey, on October 1, 1930, praying for the probate of said will, setting forth therein, under oath, that [fol. 119] said John T. Dorrance departed this life at his residence in Cinnaminson Township, in the County of Burlington, and State of New Jersey, leaving him surviving, as his heirs at law and next of kin, certain persons, including his widow and four children whose post office addresses were Riverton, New Jersey, and pursuant to said petition, said will was admitted to probate, and letters testamentary thereon were issued to petitioners, by order of said Surrogate made and entered on October 2, 1930, which order is still in full force and effect.

13. Thereafter petitioners filed an inventory and appraisal of said estate on or about April 17, 1931, and certain accountings were adjudicated and allowed November 5, 1931, and certain refunding bonds and releases, and other documents have been filed necessary for the administration of said estate, and they have had all necessary proceedings therein, before the Orphans' Court of Burlington County, and have, under orders of said court, partially administered and distributed said estate, and received large sums of money as allowances for executors' commissions and counsel fees. Said estate is still being administered under the jurisdiction of the Orphans' Court of Burlington County. Said will has never been offered for probate, or probated, and no letters of administration on said estate have ever been granted, in the Commonwealth of Pennsylvania, or in any other jurisdiction except in said County of Burlington, and the estate and property of decedent, title to which was passed by said will, is located in the State of New Jersey, within the jurisdiction of said court, and is subject to distribution, and inheritance taxes, under the laws of New Jersey.

14. The order of the Surrogate of Burlington County admitting said will to probate and granting to petitioners letters testamentary thereon for the administration of [fol. 120] said estate was an order of the Surrogate's Court, a court of competent jurisdiction under the laws of this state, having jurisdiction over the property of said estate in a proceeding in rem, wherein said Surrogate's Court judicially decided that decedent, John T. Dorrance, at the time of his death, was domiciled in the County of Burlington and State of New Jersey. Said order cannot

be collaterally attacked in this proceeding, and is conclusive and final until reversed on appeal, according to law.

15. Respondent is advised, and therefore avers, that the Surrogate's Court of Burlington County had jurisdiction to determine the domicile of the decedent, John T. Dorrance, and that the decision by said court, necessary for admitting said will to probate in said county and for the issuance of letters testamentary thereon, that decedent John T. Dorrance was, at the time of his death domiciled in Burlington County, New Jersey, is binding upon petitioners and respondent, and upon this court, in this proceeding.

16. On April 6, 1931, a return, and on August 17, 1931, an amended and corrected return, were filed, according to law and the regulations of respondent's tax department, by Camden Safe Deposit and Trust Company, one of the petitioners herein, stating, under oath, that said John T. Dorrance was late of Burlington County, State of New Jersey. Said estate, as shown in said amended and corrected return, consisted entirely of personal property as follows:

[fol. 121] Deposits	$ 4,032,719.69
Stocks	89,191,106.03
Bonds	21,389,796.85
Accounts receivable	69,047.97
Notes receivable—no value—Life insurance	160,000.00
Miscellaneous	8,235.16
Accrued interest receivable on bank balances	13,456.98
Dividends receivable on stock payment to holders of record prior to date of death of decedent	41,976.80
Accrued interest receivable on bonds	218,124.50
Dividends on life insurance policies	1,054.94
	$115,121,518.92

from which deductions were claimed amounting to $3,279,464.34. Substantially all of said property was then and still is located in the State of New Jersey. None of it was or is located in Pennsylvania.

17. Said estate was duly appraised according to law, on October 16, 1931, as follows:

Value of personal property	$115,121,518.92
Value of real property	
Total estate	$115,121,518.92
Debts, expenses, etc.	3,066,118.06
Net amount of estate for distribution	$112,055,400.86

18. Prior to the making of the assessment of the taxes described in paragraph 5 of said amended petition, peti- [fol. 122] tioners appeared by their proctor at a hearing before respondent's predecessor, and claimed that said John T. Dorrance, at the time of his death, was domiciled in the Township of Cinnaminson, County of Burlington and State of New Jersey, and in support of such claim, submitted as proof thereof, certified copies of said will and the proceedings and order for the probate thereof, and numerous statements, letters and other documents and records; all of which, together with the findings of fact thereon, are contained in the transcript of the record filed by petitioners herein.

19. After said hearing, and the consideration of the evidence, submitted on behalf of petitioners, respondent's predecessor, made a finding of fact thereon that the legal domicile of John T. Dorrance, at the time of his death, and for many years prior thereto, was Cinnaminson, Burlington County, New Jersey, which finding of fact was submitted in writing to petitioners on May 13, 1931. Thereafter, on October 17, 1931, respondent made, and served upon petitioners, the assessments of transfer inheritance taxes described in paragraph 5 of the amended petition. No appeal from said assessments was ever taken by petitioners.

20. Respondent is advised, and therefore avers, that petitioners are estopped from asserting or maintaining in this proceeding, as they do in paragraph 8 of said amended petition that said John T. Dorrance was, at the time of his decease, domiciled in the Commonwealth of Pennsylvania.

21. On or about December 12, 1931, petitioners filed with respondent their petition reciting the proceedings in Pennsylvania for the assessment and collection under the laws of that state, of transfer inheritance taxes upon the estate of said John T. Dorrance, then being administered by peti-

tioners under the jurisdiction of the Orphans' Court of [fol. 123] Burlington County, New Jersey; that petitioners had submitted to respondent certain evidence as to the domicil of said John T. Dorrance at the time of his decease; and that petitioners had, since the filing of said assessments, obtained a large amount of information, facts and evidence relating to and bearing upon the domicil of said John T. Dorrance at the time of his decease, which was not in their possession at the time of the filing of said assessments, which they desired to submit and present before the final determination of said assessments, and praying that said assessments of October 17, 1931, be opened and set aside and cancelled and for nothing holden and that the proceedings thereon be opened and permission granted to petitioners to submit and present to respondent further and additional information, facts and evidence relating to and bearing upon the domicil of said John T. Dorrance at the time of his decease, and other information, facts and testimony relating to and bearing upon the estate of said John T. Dorrance, deceased.

22. Respondent, accordingly, on December 12, 1931, ordered that said assessments of October 17, 1931, be opened, set aside and cancelled and for nothing holden and that the proceedings thereon be opened for the purposes set forth in said petition and in accordance with the prayer thereof.

23. In making said order respondent relied upon the representations and good faith of petitioners and upon the truth and sincerity of the purposes stated in their petition for such opening and cancelling of said assessments and believed that he could safely grant said petition without injury or prejudice to himself or the State of New Jersey. It was not until petitioners, shortly after the date thereof, submitted to respondent, as proof of their claim of decedent's domicile in the Commonwealth of Pennsylvania, then [fol. 124] for the first time made by them, a copy of the decision and decree of the Supreme Court of Pennsylvania made September 26, 1932, described in paragraph 7 of said amended petition, that respondent discovered that the real intent and purpose of petitioners, in petitioning for the opening and cancellation of said assessments, was to postpone the effective date of the levy of taxes thereunder and

the collection of said taxes thereunder until after the decision and decree of the Supreme Court of Pennsylvania to enable petitioners to plead said decree as a bar under the Constitution of the United States to any assessment made by the State of New Jersey under its inheritance tax laws, as alleged in paragraphs 8 and 13, of said amended petition.

24. Thereupon on October 10, 1932, respondent reinstated said assessments and served the same upon petitioners, and said assessments form the basis of this appeal.

25. By withholding and concealing, or remaining silent upon said true intent and purpose of said petition to open and cancel said assessments, petitioners fraudulently and designedly misled and deceived respondent into making said order of December 12, 1931, and fraudulently and designedly induced him to change his position and open and cancel said assessments to the prejudice of respondent and the State of New Jersey, and to the profit and advantage of petitioners.

26. Respondent is advised, and therefore avers, that petitioners are estopped from asserting and maintaining, in this proceeding, that the determination of the Supreme Court of Pennsylvania, that the domicile of said John T. Dorrance was, at the time of his death, in the Commonwealth of Pennsylvania, as alleged in paragraph 8 of said amended petition, and that the assessments made and levied by respondent on October 10, 1932, described in para- [fol. 125] graph 9 of said amended petition, are erroneous, illegal and void for the reasons alleged in paragraph 13 of said amended petition, or that said assessments are erroneous for the reasons alleged in paragraph 14 (a) and (d) of said amended petition.

27. Neither respondent nor the State of New Jersey, or any department or agency thereof, was a party to the proceedings in the Courts of Pennsylvania, mentioned in paragraphs 4, 7 and 8 of said amended petition, and respondent is advised, and therefore avers, that neither he nor the State of New Jersey, or this court, is bound by the decisions or decrees of the Supreme Court of Pennsylvania rendered therein.

28. Respondent is advised, and therfore avers, that said Registrar of Wills of Delaware County, Pennsylvania, was

without jurisdiction to make an assessment, under the laws of Pennsylvania, for transfer inheritance taxes on the estate of said John T. Dorrance, as alleged in paragraph 4 of the amended petition, and the Orphans' Court of Delaware County, Pennsylvania, and the Supreme Court of Pennsylvania, were without jurisdiction to conduct any proceedings respecting the assessment or collection of transfer inheritance taxes under the laws of Pennsylvania, upon the property of said decedent, John T. Dorrance, which was then under jurisdiction and control, and which had passed under said will probated in, and was then being administered by the courts of New Jersey, under the laws thereof, or to make any judgments or decrees respecting the same, as alleged in paragraphs 7, 8, 13 (d), and 14 (e) of said amended petition, and said Board for the Assessment and Revision of Taxes of the County of Delaware in the Commonwealth of Pennsylvania had no jurisdiction or authority to assess the estate of said John T. Dorrance in the sum of $400,000 or any other sum, for each of the years 1926 to 1930, [fol. 126] inclusive, for personal property taxes in Pennsylvania, with interest thereon, as alleged in paragraphs 12 and 14 (a) of said amended petition.

29. Respondent is advised, and therefore avers, that in the conduct of the appeal from the decree of the Orphans' Court of Delaware County, Pennsylvania, described in paragraph 7 of the amended petition, before the Supreme Court of Pennsylvania, it was the duty of petitioners, and necessary and vital to the adequate protection of the rights of petitioners and said estate, and to obtain a proper decision thereon, and also to obtain, if necessary, a review of the decree of said Pennsylvania Supreme Court in the Supreme Court of the United States, that they should properly present to said Supreme Court the question and contention that the assessment, under the laws of Pennsylvania, of transfer inheritance taxes upon the estate of said John T. Dorrance violated petitioners' rights under the Constitution of the United States. Petitioners failed and neglected to property present to the Supreme Court of Pennsylvania said federal question and contention, and on account of such failure and neglect, petitioners were denied a review of the decision of the Supreme Court of Pennsylvania, mentioned in paragraphs 7 and 8 of said amended petition, in the Supreme Court of the United States.

30. Respondent is advised and therefore avers, that petitioners are hereby in laches and are barred and estopped from alleging or maintaining on this appeal that the domicil of decedent, John T. Dorrance, was at the time of his death in the Commonwealth of Pennsylvania, and that said determination of the Supreme Court of Pennsylvania is binding upon respondent or this court.

31. Respondent is advised, and therefore avers, that the question of the domicil of said John T. Dorrance at the time of his death is a question within the jurisdiction of [fol. 127] the courts of each state according to the laws of the forum, and that the decision of the Supreme Court of Pennsylvania, described in paragraph 7 of said amended petition, is not res judicata of the domicil of decedent and has no binding effect upon respondent or this court, and that the adjudication of domicil of said John T. Dorrance in Burlington County, New Jersey, at the time of his death, by the order of the Surrogate's Court of said County for the probate of said will and the issuance of letters testamentary thereon, and the subsequent proceedings in the Orphans' Court of said county for the administration of said estate, is a judgment, in a proceeding in rem, of a court of competent jurisdiction having jurisdiction of the property of said estate, which cannot be collaterally attacked and remains in full force and effect at the present time, and is binding upon petitioners, respondent and this court, and that the transfer inheritance taxes levied by respondent upon the property of said estate which passed under said will, and by virtue of said order of the Surrogate's Court and the administration of said estate by said Orphans' Court of Burlington County, are not erroneous, illegal and void in any respect, and do not violate the XIV Amendment or Section 1 of Article IV of the Constitution of the United States, as alleged in paragraph 13 of said petition.

Wherefore respondent prays that said amended petition be dismissed and said transfer inheritance taxes be in all respects affirmed.

William A. Stevens, Attorney General, Proctor for Respondents. Duane E. Minard, William A. Moore, Counsel.

March 28, 1933.

[fol. 128] EXHIBIT TO ANSWER

Conclusions of Prerogative Court

New Jersey Prerogative Court

No. 4148

In re Estate of JOHN T. DORRANCE, Deceased,

Between,

ETHEL M. DORRANCE, et al., Executors, &c., Appellants,

and

J. H. THAYER-MARTIN, Tax Commissioner, Respondent

Conclusions. Filed Feb. 7, 1934. (115 N. J. E. 268)

Transfer Inheritance Tax Appeal on Final Hearing

Mr. William D. Lippincott, and Mr. John Milton, with whom were Mr. Nathan Miller and Mr. Harold Otis, of the New York Bar, for Appellants.

Mr. William A. Stevens, Attorney General.

Mr. Duane E. Minard, Assistant Attorney General, and Mr. William A. Moore, Assistant Attorney General, for Respondent.

BUCHANAN, V.-O.

John T. Dorrance died at Cinnaminson, N. J., September 21, 1930. His executors petitioned for and obtained decree for probate of his will as a resident of Cinnaminson, in Burlington County, N. J.; and subsequently made report of the assets of the estate, as of a resident decedent, [fol. 129] to the State Tax Commissioner. The latter made an assessment of transfer inheritance tax amounting to nearly $17,000,000.00, against the estate, October 17, 1931. He subsequently, on December 12, 1931, opened the assessment and gave the executors permission to submit further evidence on the question of decedent's domicile; this having been submitted, the Commissioner made a reassessment on October 10, 1932, in the same amounts as before. From this assessment the executors appeal to this Court.

The main contention of appellants: (several other sub-

ordinate grounds of appeal, of minor importance, are specified in the petition),—is that the assessment is erroneous, illegal and invalid because the Commissioner found that decedent was domiciled in New Jersey at the time of his death, and included the value of decedent's intangible personal property in computing the tax; whereas (they contend) decedent was not domiciled in New Jersey, and hence no tax can legally be assessed in New Jersey in respect of the testamentary transfer of such intangible personality.

Concededly the conclusion is true, if the premise be true. Tax on the testamentary (or intestate) transfer of a decedent's intangible personalty may be legally assessed and levied only by the State in which the decedent was domiciled at the time of his death; this is conclusively settled by the decisions of the United States Supreme Court in First National Bank of Boston v. Maine, 284 U. S. 312, and Farmers' Loan and Trust Co. v. Minnesota, 280 U. S. 204; and this determination is controlling upon the Courts of this State in this litigation.

The essential issue is therefore whether or not Dr. Dorrance, at the time of his death, was domiciled in New Jersey. If he was, then the tax in question is correct, (at least substantially); if he was not, then no tax can be levied by New Jersey, except as to the few thousand dollars of tangi-[fol. 130] ble personal property located here,—for almost the whole of the estate (of some $115,000,000.00) consisted of stocks, bonds, and other intangible personalty. There are, however, a few subordinate or preliminary issues.

For some years prior to his death Dr. Dorrance had occupied two residence houses, one in New Jersey and the other in Pennsylvania. During the time the present proceedings were pending, similar tax proceedings were instituted against the estate in Pennsylvania, on the claim by that State that Dr. Dorrance was domiciled in Pennsylvania; this claim was sustained, and a tax assessed by the Register of Wills of Delaware County, Pennsylvania. On appeal to the Orphans' Court of that County, that Court adjudged Dr. Dorrance as domiciled in New Jersey and set the tax aside; but later the Supreme Court of Pennsylvania reversed the decree of the Orphans' Court, and directed the assessment of a tax of some $17,000,000.00. The Supreme Court of the United States denied the application of the executors for review of that decree; and the executors were compelled to pay that tax to the Pennsylvania authorities.

The appellants contend that the determination by the Pennsylvania Supreme Court is controlling upon the authorities in New Jersey, upon the question of Dr. Dorrance's domicile. This is denied by respondent.

Respondent contends that the appellants are estopped or precluded, for several reasons, from claiming that Dr. Dorrance was not domiciled in New Jersey. It may well be that this contention is sound. Certainly at first impression there would seem to be considerable weight to the argument that the executors, after having claimed by their sworn petition to the Burlington County Surrogate, that Dr. Dorrance was domiciled (resident) in New Jersey; after the adjudication by the Surrogate that he was so domiciled, and [fol. 131] the consequent decree probating the will in Burlington County and issuing letters testamentary to these executors (on which letters depends their authority to act in these very proceedings and in the administration of the estate); after they have acted for some two years in administrating the estate on the strength of that probate in Burlington County, so procured by them, and have obtained and received from the Burlington County Orphans' Court, allowances of $1,500,000.00 for their services as such executors; after they have, by their original sworn petition to the Tax Commissioner in these proceeding in rem; that (2) the res in that proceeding was domiciled in this State; and after the decedent himself, (the very person whose property is concerned), has asserted in the strongest terms, in the very will which conferred authority on these executors to act as such, that he was domiciled in New Jersey;—that the executors should not now be heard or permitted to claim that decedent was not domiciled in New Jersey.

In view of the publicity which has been accorded the litigation over this estate both in the Courts of Pennsylvania and of New Jersey, and the public interest therein, this Court has deemed it advisable to consider the main issue involved,—to wit, the issues as to the actual domicile of the decedent.

As has already been said, the appellants contend that this Court is precluded from considering that issue; that the decision of the Pennsylvania Court is conclusive and controlling upon this Court. With that contention this Court is unable to concur.

That contention, more fully expressed, is that (1) the Pennsylvania decision or decree was a final decree in a proceeding in rem; that (2) the res in that proceeding was the assessment and levy of transfer tax in respect of the intangible personal property of the decedent; (3) that the [fol. 132] right of Pennsylvania to assess and levy such tax in a decedent's estate was, and must necessarily be, predicated upon the fact that the decedent was domiciled in Pennsylvania; (4) that under the law of Pennsylvania the determination of the Pennsylvania Court in a proceeding of this kind is final and conclusive against all the world; (5) that by virtue of Art. IV, Section 1, of the Constitution of the United States and of the statue enacted to carry that provision into effect,—(the Act of May 26, 1790; U. S. Rev. Stat. Section 903),—that adjudication by the Pennsylvania Court must be accorded the same effect by the New Jersey Courts, and hence must, in this appeal, be regarded as final and conclusive against the State of New Jersey (notwithstanding New Jersey was not a party to the Pennsylvania proceedings) and as a conclusive adjudication against the claim by New Jersey of the right to levy transfer inheritance tax in respect to the intangible personalty of the Dorrance Estate.

The correctness of the first three propositions is not questioned; the correctness of the fourth may be assumed (but not decided); it is the fifth proposition which is incorrect, and which vitiates the conclusion of the argument.

The constitutional provision invoked by the appellants is commonly known as the full faith and credit clause. It is true that under it, and the statute, the Courts of this State are bound to give to the judicial proceedings in Pennsylvania the same faith and credit as they have by law and usage in the Courts of Pennsylvania. But this is true only if the proceedings in the Pennsylvania Court were within the jurisdiction of that Court. It is always open to the Courts of the sister state to inquire into the jurisdiction of the Court which pronounced the judgment in question. When it is demanded of the Courts of one State that full faith and credit be accorded to the judgment of the Court of a sister State, "an inquiry into the jurisdiction (of the latter Court) is always permitted, and if it be shown that [fol. 133] the proceedings relied upon were without the jurisdiction of the Court, they need not be respected." Tilt

v. Kelsey, 207 U. S. 43, at 59; Thompson v. Whitman, 18 Wall. 457; Thormann v. Frame, 176 U. S. 350; Burbank v. Ernst, 232 U. S. 162.

Concededly the Courts of Pennsylvania had no jurisdiction to assess and levy the tax in question unless the decedent was domiciled in Pennsylvania. It is therefore open to this Court, in the exercise of its right to inquire into the jurisdiction of the Pennsylvania Court, to inquire into, ascertain and determine whether or not the decedent was domiciled in Pennsylvania. If it be determined that he was not domiciled in Pennsylvania, then the determination of the Pennsylvania Court that the transfer inheritance tax assessable in respect of his intangible personalty is due to the State of Pennsylvania, is in no wise binding upon this Court and can in no wise interfere with the right of this Court to inquire and determine if the decedent was domiciled in this State, and to affirm and establish (if it finds that decedent was domiciled in this State) the right of this State to levy the tax in question and the validity of the tax so levied and now under appeal.

As a practical matter the two questions, although technically separate and distinct, present for determination in the instant case a single issue,—for it is not only conceded by counsel but apparent from the evidence, that Dr. Dorrance was domiciled either in New Jersey or Pennsylvania; that he was domiciled in New Jersey at and prior to 1925; that if he did not later become domiciled in Pennsylvania, then he remained and was domiciled as his death in New Jersey, but if he did become domiciled in Pennsylvania, then he remained so domiciled at his death. In short, the single question is,—was he or was he not domiciled in Pennsylvania.

[fol. 134] The evidence shows that Dr. Dorrance after finishing his education went to work at Camden, New Jersey, in 1907, and lived in the same place; that he continued to reside in Camden after his marriage in 1906; that he and his wife finally found the kind of a home they wanted at Cinnaminson, New Jersey, and established themselves in it as their home in 1911. The evidence need not be recited in detail, but it clearly establishes that at that time that house became in fact the residence and home of Dr. Dorrance and his family; that Dr. Dorrance intended it as his fixed and permanent residence and home; that he intended it to remain such indefinitely; that he had no intention at that time

that it should not always remain his home. In short, the evidence establishes beyond any doubt that in 1911 Dr. Dorrance became and was domiciled at Cinnaminson, New Jersey, and that that place continued to be both his actual residence or home and his legal domicile, at least until 1925. Nor is this controverted by the appellants.

The evidence further shows that in 1925 he purchased a house and grounds at Radnor, Pennsylvania, and made extensive improvements, with the intent and purpose that this place should be *a* residence for himself and his family; and that in the latter part of 1925 he and his family moved into the Radnor house and actually occupied it as a residence; that from that time to the time of his death Dr. Dorrance actually occupied the Radnor house as a residence most of the time (excluding trips abroad and periods of summer vacation) and the instances of his occupation of the Cinnaminson residence were not particularly frequent and were of comparatively short duration,—and the instances of occupation of the Cinnaminson residence by his wife and children were even less frequent and of even shorter duration than his own.

If the question of the domicile of Dr. Dorrance at the time of his death depended only upon the fact as to what [fol. 135] residence he chiefly occupied as a home during the five years preceding his death, it would probably be conceded by the respondent that his domicile was in Pennsylvania. That fact however, is neither the determining factor, nor a controlling factor, in this case, under the law of domicile.

There are certain fundamental principles of the law of domicile, so thoroughly established everywhere as to be frequently called "axiomatic". Among them are the following:

1. When a man has acquired a domicile in a particular place, that place remains his domicile until he acquires another domicile.

2. To effectuate such a change of domicile it is requisite that he shall in fact remove from the old domicile to the new, with the intention of abandoning the old domicile and of remaining permanently or indefinitely in the new.

3. The burden of proof to establish that a change of domicile has occurred rests upon the party so asserting.

4. A man has the right to choose his own domicile, and his motive in such choice is immaterial.

5. A man may have more than one residence, (such as a summer residence and a winter residence), but he cannot have more than one domicile at any given time.

6. If a man has more than one residence during a given period, he has the right to select which one of them shall be his domicile.

It seems scarcely necessary to cite authorities for these propositions. It is not understood that any of them are controverted by appellants. Reference may be made to such cases as Cadwalader v. Howell, 18 N. J. L. 138, (the unanimous opinion of the Supreme Court and the leading case in New Jersey); Guggenheim v. Long Branch, 80 N. J. L. 246, 76 Atl. 338; affirmed, 83 N. J. L. 628, 84 Atl. 21; Mitchell v. [fol. 136] United States, 88 U. S. 350; and the authorities cited in these cases; also such authoritative text writers as Phillimore, Domicile; Dicey, Domicile; Wharton, Conflict of Laws; Story, Conflict of Laws; Kent's Comm.

We have, in the present case, this situation: that Dr. Dorrance had a residence at Cinnaminson, New Jersey, which he occupied for many years and where he unquestionably was domiciled at and prior to 1925; the assertion (in the Pennsylvania proceeding and in this appeal) that he changed his domicile to Radnor, Pennsylvania, in 1925; the necessity that the truth of that assertion be proven by the weight of evidence; and the necessity of proving not merely that he then changed his residence in fact, but that he did so with the intention of abandoning his domicile in Cinnaminson and with the intention that the house at Radnor should thereafter be his permanent home.

The appellants, (and the Pennsylvania Court) rely on the facts that Dr. Dorrance purchased the Radnor house and improved it with the intention of using it as a residence or home for himself and his family; that it was far larger, more expensive and pretentious than the old home at Cinnaminson; that he thereafter,—except for European trips and summer vacations,—occupied it by far the greatest part of the time (and his family even more so); that his subsequent occasions of occupancy of the Cinnaminson residence were comparatively few and of short duration, (the occupancy by his family even fewer and shorter); that from and

after November, 1925, the Radnor house was in fact the real residential home of himself and his family.

All this must be conceded; it is fully established by the evidence. All this, however, goes only to the *fact* of residence; it is equally necessary to prove intent—to prove that in moving into and occupying the Radnor residence as a residential home, he did so with the intention of occupying [fol. 137] it as a permanent home and abandoning the Cinnaminson residence as a home.

The appellants, (and the Pennsylvania Court), assert that that intention is proven—that it is a necessary inference from the facts stated; but their argument goes but little beyond that mere assertion. Their argument is cencentrated on the effort to show that from and after 1925 the house at Radnor was in fact the real and actual home of the Dorrances and the house at Cinnaminson was a mere country house occasionally and briefly visited. Their contention is that the establishment and occupancy of the Radnor house as an actual home proves that there was an intention that it should be his permanent home and that there was no intention of returning to the Cinnaminson house as his home.

This is an obvious non sequitur, and it disregards a great mass of evidence relevant and material on the question of intent,—evidence which, in the judgment of this Court, clearly establishes an intent quite the contrary,—an intent not to abandon the Cinnaminson home,—an intent that the Radnor house was to be a home only temporarily and that the Cinnaminson house was to be returned to as a home.

It is true, as the appellants urge (and the Pennsylvania Court stresses), that the intention required for the acquisition of a domicile of choice is an intention to make a home in fact, and not an intention to acquire a domicile. Am. Law Inst., Restatement, Conflict of Laws, Section 21. If Dr. Dorrance had intended to make his residence in Radnor his actual home for all practical purposes for the rest of his life and intended to live no more in Cinnaminson, he could not retain his legal domicile in Cinnaminson; in such case his intent or wish to retain a technical legal domicile in New Jersey while actually making, and intending to make, his permanent home in Pennsylvania, would be un- [fol. 138] availing. Dickinson v. Brookline, 181 Mass. 195. "A person's wish to retain a domicile in one country will not enable him to retain it if in fact he resides with animus manendi in another." Dicey, Conflict of Laws, p. 106.

No matter how much he may wish or strive to avoid that legal consequence, a man's domicile will follow him to his new home, if he establishes himself in a new home and intends that new home to be his permanent home. But that legal result will not follow, no matter how completely he establishes himself in a new home if he does not intend the new home to be his permanent home,—if he intends that it shall not be his permanent home.

The law is thoroughly well settled and unquestioned everywhere that a man's domicile once acquired, remains until a new domicile is acquired, and that a new domicile is not acquired by moving to another residence unless he has the intention to make his home permanently in the new residence. Cadwalader v. Howell, supra; Watkinson v. Watkinson, 68 N. J. Eq. 632, 60 Atl. 931; Givernand v. Variel, 86 N. J. Eq. 80, Atl; affirmed unanimously, sub-nom. Plahn v. Variel, 86 N. J. Eq. 654, 103 Atl. 1054; Williamson v. Ostenton, 232 U. S. 619, where the United States Supreme Court says,—

"The essential fact that raises a change of abode to a change of domicile is the absence of any intention to live elsewhere (Story, Conflict of Laws, Section 43); or as Mr. Dicey puts it in his admirable book, 'the absence of any present intention of not residing permanently or indefinitely in the new abode (Conflict of Laws, 2nd ed., 111).' "

Citations of authority to the same effect could be multiplied indefinitely, including decisions in most of the states of the union,—but to no useful purpose. One more may be mentioned because of its particularly pertinent interest,—[fol. 139] In re Frick's Estate, 116 N. Y. Misc. 488, 190 N. Y. Supp. 262, in which the circumstances were as nearly identical with those in the Dorrance case as is possible in any two cases. Henry C. Frick, a millionaire originally domiciled in Pittsburgh, Pennsylvania, maintained a home in New York City in which he spent most of his time during the last five years of his life. The New York tax authorities sought to assess transfer inheritance tax on his estate but the New York Court held in favor of Pennsylvania that Mr. Frick had never abandoned his domicile in Pennsylvania; and had not acquired a legal domicile in New York. In the Dorrance case the Pennsylvania Court had the same question and the same situation. It is impossible for this Court

to concur in its contrary determination, nor to conclude otherwise than that the Pennsylvania adjudication is erroneous and that the opinion of the Pennsylvania Orphans' Court and of the dissenting judges of the Pennsylvania Supreme Court was correct.

The evidence in the present case is overwhelming that although Dr. Dorrance moved to Radnor and made his home there for the greatest part of the time during the succeeding five years terminated by his death, he never had the intention of abandoning his home at Cinnaminson; he never had the intention of making the Radnor residence his permanent home; he always had the intention of returning to his home at Cinnaminson.

The situation was essentially the same as that of a man who goes to a foreign country as ambassador, or minister or consul, or as foreign representative for one of the large business corporations. He establishes himself and his family in a home in that foreign country; that is his actual home during the period of his stay, but it is not his permanent home. He may not return to his old home even once during the entire period of his foreign stay, which may be [fol. 140] for years; and his stay may be for a definite or indefinite number of years; but if he does not intend to make his home there permanently,—if he intends to return to his old home at the conclusion of his job or his period of assignment, he does not lose his old domicile. So also with a man who, when his son or daughter goes to college, moves from his old home to a house in another State to be near his child, intending to stay in the new home while his child is being educated, (a period which could not be definitely limited in advance) but intending to move back to the old home thereafter; he would not lose his old domicile and acquire a new one.

Such was the case with Dr. Dorrance. His life had been spent in New Jersey; his business had been there for years and still there; all of his own interests were there; it was there that he had his home and there he wanted to remain. So far as he individually was concerned, he did not want to reside in Radnor or anywhere else than his home in Cinnaminson. His children however were growing up. He had four daughters, the eldest was eighteen. For the purpose of completing their education and giving them social advantages deemed necessary or advisable for their benefit

in approaching maturity, he yielded to his wife's arguments and solicitations and established the new residence and home in Radnor. But it is entirely clear from the proofs that he did this with no intention of abandoning the home at Cinnaminson; with no intention that the Radnor house should be his permanent home, with every intention that the Radnor house was not to be his permanent home but only a temporary home for so long only as should be requisite or advisable to complete their education and give them the proper social preparation for their start in life, and with the intent that as soon, at least, as that had been done,—if not indeed earlier,—he would return to his home in Cinnaminson.

[fol. 141] That this was his intent was manifested in almost innumerable ways. It is difficult, if not impossible, to conceive of a case in which the items of evidence in this behalf could be more numerous. It appears from his conversations and his correspondence with his wife, his relatives, his lawyers, his friends, his business associates, his servants, and many others with whom he came in contact. His business remained at Camden, near the Cinnaminson house; his office remained at Camden; his securities remained in the Camden banks; his personal counsel and legal adviser continued to be Judge Lippincott whose offices were in Camden and whose home was near Cinnaminson.

He continued actively as a member of the vestry and Senior Warden of Christ Church, at Riverton, N. J., near Cinnaminson. He was interested in investments in New Jersey and not in Pennsylvania. He was assessed and taxed on his personal property in Cinnaminson and not in Radnor. He and his wife continued to vote in Cinnaminson, neither one ever voted in Radnor. He was active politically in various ways in New Jersey, but not in Pennsylvania. He was appointed to, and served for several years on a commission of the State of New Jersey. His motor vehicle registrations and drivers' licenses were from New Jersey.

His intention to retain his residence in New Jersey is evidenced by many, many written statements and declarations, many of them in legal documents or instruments of various kinds, some of them under oath, and including his will,—an instrument of particular importance, not only because of the nature and solemn character of such an instru-

ment, but because of the particular and forceful nature of the expressions therein as to his residence.

He continuously maintained the Cinnaminson house as a residence, open and fully equipped for occupancy at all [fol. 142] times, and with a full staff of servants, (whereas the Radnor house was sometimes closed and without servants); and both he and his wife and children came and stayed there at times, even though infrequently and for periods of not long duration. It is evident that he intended to occupy the Cinnaminson home more than he actually did; that he did not do so was largely due to the fact that subsequent to moving to the Radnor house his mother became ill and he established her at Cinnaminson, which thereby cut down the living quarters for the family. It is however not without special significance that it was to the Cinnaminson house that he returned when he came down, ill, from Bar Harbor in September of 1930, and that he died there. He had not only kept the house constantly in perfect repair, but had made improvements looking toward his eventual return.

The foregoing is by no means an exhaustive recital of all the evidence on the point; but enough has been mentioned to show the great weight of evidence to prove that he had no intent to abandon the Cinnaminson house as his permanent home; that it continued, as always, the "old homestead"; that he intended the Radnor house only as a temporary, not a permanent home; that he always intended to return to the permanent home at Cinnaminson.

It results therefore that he never acquired a legal domicile in Pennsylvania; that he never lost his legal domicile in New Jersey; that the Pennsylvania Court was without jurisdiction to levy transfer inheritance tax on the intangible personal property of his estate; that the Pennsylvania assessment was illegal, invalid; that the decision of the Pennsylvania Court is in no wise binding upon this Court or the Tax Commissioner of this State; that New Jersey has the right,—and the sole right,—to levy transfer inheritance tax upon the intangible personal estate; and that to [fol. 143] that extent, and so far as that ground of appeal is concerned, the present tax must be affirmed.

There were two or three other grounds of appeal of minor importance, dealing with alleged errors by the Tax Commissioner in failing to allow certain amounts claimed to be

deductible as debts or administration expenses. These have not been considered, for the reason that counsel on both sides stated that they thought those could be satisfactorily worked out and adjusted or agreed upon. If such adjustment or agreement has not been or cannot be made, these items will be adjudicated upon application on the usual notice.

[fol. 144] EXHIBIT TO ANSWER

Supplemental Conclusions of Prerogative Court

NEW JERSEY PREROTATIVE COURT

No. 4148

In Re Estate of JOHN T. DORRANCE, Deceased

Between,

ETHEL M. DORRANCE, et al., Executors, &c., Appellants,

and

J. H. THAYER-MARTIN, Tax Commissioner, Respondent

Supplemental Conclusions. Filed May 10, 1934. (116 N. J. E. 204)

BUCHANAN, V.-O.

Since the filing of the earlier conclusions in this matter, (In re Dorrance, 115 N. J. Eq. 268, Atl. —), opposing counsel have come to agreement as to certain of the items then in process of negotiation,—namely that the so-called "Compromise Tax," (assessed, by way of compromise and commutation for present payment, in respect of legacies in expectancy which are contingent and defeasible), should be eliminated from the assessment under review, inasmuch as under the terms of the statute, tax on these transfers is not assessable until the occurrence of the contingencies, except by agreement and consent of the decedent's estate,—which is here lacking; also that the appellants are entitled to credit, (as a deduction from the gross estate, in the computation of the tax), as an administration expense, of the [fol. 145] additional commissions and counsel fees allowed the executors by the Burlington County Orphans' Court.

In the propriety and legality of this result, this Court concurs.

With respect to two other items, however, the parties have not been able to agree.

The statute, (P. L. 1929, c. 144) provides,—p. 252,—that in determining the value of the property transferred, for the purpose of computing the tax on the transfer, certain deductions "and no others" shall be allowed. Included in the specified deductions are

"Debts of the decedent owing at the date of death," and
"Transfer taxes paid or payable to other States * * * on any property the transfer of which is taxable hereunder."

Appellants contend that under the first of the above specifications, they are enfitled, in the computation of the tax, to be credited with deduction in the amount of the personal property tax of $1,099,552.52, assessed by the State of Pennsylvania against Dr. Dorrance or his estate, subsequent to his death in respect of his entire personal estate (over and above the small amount thereof actually located in Pennsylvania), for a period of several years prior to the decedent's death. The basis,—and of course the only possible basis,—for the assessment of this tax, was the contention that Dr. Dorrance had been legally domiciled in Pennsylvania. That he was so domiciled in Pennsylvania was determined by the highest court in Pennsylvania, and it is a logical conclusion from proofs and circumstances in this case, that the present appellants were, or would have been, compelled to pay this tax, which they did in fact pay.

[fo]. 146] "Debts of the decedent owing at the date of death" must necessarily mean debts "legally owing." In view of the Pennsylvania decision in the transfer tax case, it must be deemed that it was decided by the Pennsylvania Courts that this personal property tax was legally due and owing,—even if the executors did not actually carry the personal property tax to the highest court. It sufficiently appears therefore that the executors were legally compelled to pay this tax. Respondent argues that if the executors had taken some different course of legal procedure, they might or would, have been able to escape this result. This may be so; but it in no wise appears that the executors

were consenting to the payment of this tax, or chargeable with any negligence in their efforts to resist it,—they acted on the advice of able counsel, and their course, especially in view of the circumstances and situation as they appeared at that time, seems quite justifiable. If the present issue dealt with the right of the executors to have this tax payment allowed as a proper disbursement item in their account as such executors in the Orphans' Court, there can be no question but that it would have to be so allowed.

The present issue however is quite different; it is as to whether the executors are entitled to have this tax deducted, under the New Jersey statute, from the amount of the estate on which the New Jersey transfer is to be computed. If the New Jersey Court is bound by the Pennsylvania decision, then it must be determined that the tax was legally owing, and that the executors are entitled to the deduction claimed.

As has been set forth in the earlier opinion herein, however, the New Jersey Courts are not bound by the Pennsylvania decision. As has already been said, this Court has the right to determine for itself the question of the domicile of Dr. Dorrance, and has determined that that domicile was in New Jersey and was not in Pennsylvania, [fol. 147]; and that,—so far at least as this State is concerned,—the assessment of transfer inheritance tax by Pennsylvania, was erroneous and illegal. For the same reason, the Pennsylvania assessment of this personal property tax,—supportable only on the finding that Dr. Dorrance was domiciled in Pennsylvania, must also be held erroneous and illegal. It was, therefore, not a debt legally owing by decedent,—and the appellants are not entitled to the deduction they claim.

For essentially the same reasons, the claim for deduction of the amount paid to Pennsylvania, for the transfer inheritance tax assessed by that State, must be held equally without support. That tax has been determined by this Court to be illegal and erroneous. When the Legislature provided for a deduction of "transfer taxes paid or payable to other States" it necessarily meant transfer taxes for which there was a legal liability on the part of the estate, under the laws of this State or binding this State. It obviously did not mean that if a foreign State made a claim for transfer tax, utterly unsupportable and illegal, and

the executors should pay the same without contest, a deduction thereof should be made in the computation of tax by this State. It meant a valid and legal tax; it did not mean an illegal and invalid tax.

In the instant case the executors did not pay the Pennsylvania tax without contest; they made a strong contest and paid only when there was no further possibility of escape therefrom. Nevertheless it still remains that the tax they paid was an illegal and invalid tax,—and a tax therefore that is not intended by our statute to be deductible in the computation of our tax. That the estate of the decedent was compelled to pay the Pennsylvania tax is indeed unfortunate for the estate, but it cannot be allowed to interfere with the right of this State to collect the tax imposed by our statute.

[fol. 148] A contrary view might well result in a complete deprivation of this State,—the State of the domicile of the decedent and therefore the only State legally entitled to transfer tax on his intangible personal estate,—of any transfer tax whatever. The Pennsylvania tax in fact amounted to something like one-sixth of decedent's estate. It might equally well have amounted to one-half or more,—(the trend in such taxation is toward increasing the rates),—and there might have been one or more other States imposing and collecting a similar tax. If the total of such taxes imposed by other States amounted in the aggregate to the entire value of the estate, or even to a large proportion thereof, the tax collectible by this State,—the only State legally entitled to such tax,—would be reduced to nothing or to a comparatively small amount, under the contention of appellants.

The legislative provision means to allow as deduction only valid and legal transfer taxes. The Pennsylvania tax is not such, and appellants are not entitled to deduction in respect thereof.

[fol. 149] EXHIBIT TO ANSWER

Final Decree of Prerogative Court

NEW JERSEY PREROGATIVE COURT

ETHEL M. DORRANCE, et als., executors etc., of the estate of John T. Dorrance, deceased, Appellants,

vs.

J. H. THAYER-MARTIN, State Tax Commissioner, Respondent

In the Matter of the Transfer Inheritance Taxes in the Estate of John T. Dorrance, deceased

On Appeal. Final Decree. Filed May 11, 1934

This matter coming on to be heard in the presence of David T. Wilentz, Attorney General of the State of New Jersey, proctor for respondent, J. H. Thayer-Martin, State Tax Commissioner, and William D. Lippincott, proctors for petitioners, Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance, and Camden Safe Deposit and Trust Company, Executors of the Last Will and Testament of John T. Dorrance, deceased, and the record having been examined and arguments of Nathan L. Miller and John Milton, of counsel for petitioners, and Duane E. Minard, of counsel for respondent, having been heard, and briefs and reply briefs having been submitted by both sides, and the court being fully advised, and having considered the same, and

The court being of opinion that decedent, John T. Dorrance, was at the time of his death domiciled in the State of New Jersey, and that the transfer of his estate was properly [fol. 150] and lawfully assessable for transfer inheritance taxes under the Transfer Inheritance Tax Act of New Jersey, of April 20, 1909, and its amendments and supplements, and

The court being further of the opinion that said act, its amendments and supplements, and said assessment, do not deprive petitioners of their property without due process of law in contravention of the XIV Amendment of the Constitution of the United States, and

The court being further of opinion that said assessment is not repugnant to the provisions of Section 1, Article IV

of the Constitution of the United States in that it fails to give full faith and credit to a decree of the Supreme Court of Pennsylvania, entered September 26, 1932, supplemented by an order of said court dated January 10, 1933, Docket No. 41, January Term, 1932, in a cause pending therein entitled "Estate of John T. Dorrance, deceased, Appeal of the Commonwealth of Pennsylvania," and

The court being further of opinion that said assessment is not erroneous because respondent, in determining the clear market value of the property of said estate, did not take into consideration and allow as deductions the sum of $1,099,552.52 paid by petitioners on February 27, 1934, as personal property taxes assessed against said John T. Dorrance, deceased, by the Board for the Assessment and Revision of Taxes of the County of Delaware, in the Commonwealth of Pennsylvania, and

The court being further of opinion that said assessment is not erroneous because respondent, in determining the said clear market value of the property of said estate, did not take into consideration and allow as deductions the sum of $14,394,698.88 and interest thereon in the sum of $104,278.03 for transfer inheritance taxes (and interest) assessed against said estate by the Commonwealth of Penn- [fol. 151] sylvania, including all the intangible personal property included in the assessment here in question, and

The parties having agreed in open court that, if the assessment and levy of transfer inheritance tax by the State of New Jersey be otherwise legal, then in determining the clear market value of the property of said estate liable to tax, said petitioners are entitled to further deductions, (including additional attorneys fees and executors' commissions), in the amount of $533,784.81 upon the corpus of said estate, as allowed by the Orphans' Court of Burlington County, New Jersey;

It is on this eleventh day of May 1934, by his Honor, Luther B. Campbell, Ordinary of the State of New Jersey,

Ordered, adjudged and decreed that the so-called "Compromise Tax" assessment of $4,521,143.90 issued by respondent on October 10, 1932, of transfer inheritance taxes upon the transfer of the estate in expectancy, which are contingent and defeasible under the provisions of the last will and testament of decedent, be and the same is hereby declared to be inoperative and ineffective, without preju-

dice to the rights of the respective parties in respect to any assessment of transfer inheritance tax which may be made upon said transfer as and when the contingencies named in the will will eventuate, or to compromise or to effect the compromise thereof in the manner laid down in the statute in such case made and provided; and

It is further ordered, adjudged and decreed that respondent in determining the clear market value of the property of the estate of John T. Dorrance, deceased, allow further deductions (including additional counsel fees and executors' commissions), in the amount of $533,784.81, as allowed by the Orphans' Court of Burlington County, New Jersey, and

[fol. 152] It is further Ordered, Adjudged and Decreed that the assessment of transfer inheritance taxes as made by respondent on October 10, 1932, amounting to $12,247,333.52 upon the transfer of the property of said John T. Dorrance, deceased, as that of a resident decedent, subject to the above modifications, be and the same in all other respects is hereby affirmed.

Luther A. Campbell, Ordinary. Respectfully advised, Malcolm G. Buchanan, Vice-Ordinary.

A true copy.

Thomas A. Mathis, Register.

[fol. 153] EXHIBIT TO ANSWER

NEW JERSEY SUPREME COURT

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M. D., ARTHUR C. DORRANCE and CAMDEN SAFE DEPOSIT AND TRUST COMPANY, Executors of the last will and testament of John T. Dorrance, deceased, Prosecutors,

vs.

J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey, Respondent

On Certiorari. Filed Aug. 4, 1934.

Reasons on Certiorari.

The prosecutors, Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit

and Trust Company, Executors of the last will and testament of John T. Dorrance, deceased, set forth the following reasons why a certain decree of the Prerogative Court, hereinafter referred to as the decree below, made by Honorable Luther A. Campbell, Ordinary of the State of New Jersey, on the eleventh day of May, 1934, affirming a transfer inheritance tax assessment made by J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, in the matter of the Estate of John T. Dorrance, deceased, brought up by the writ issued herein, should be reversed, viz:—

1. The decedent, John T. Dorrance, at his death was not domiciled in New Jersey.

2. The Ordinary erred in holding that the decedent, John T. Dorrance, at his death was domiciled in New Jersey.

[fol. 154] 3. The said decedent, John T. Dorrance, at his death was domiciled in Pennsylvania.

4. The Ordinary erred in holding that the said John T. Dorrance never acquired a domicile in Pennsylvania.

5. The decedent, John T. Dorrance, lost his domicile in New Jersey.

6. The Ordinary erred in holding that the decedent, John T. Dorrance, never lost his domicile in New Jersey.

7. The Commonwealth of Pennsylvania had the right and jurisdiction to levy a transfer inheritance tax with respect to the intangible personal property of the said decedent, the said decedent at his death having been domiciled in Pennsylvania.

8. The Ordinary erred in holding that the decedent at his death was not domiciled in Pennsylvania and that, consequently, the Commonwealth of Pennsylvania was without right or jurisdiction to levy a transfer inheritance tax with respect to the intangible personal property of the said decedent.

9. The Pennsylvania assessment of transfer inheritance tax with respect to intangible personal property of said decedent was legal and valid, said decedent at his death having been domiciled in Pennsylvania.

10. The Ordinary erred in holding that the decedent at his death was not domiciled in Pennsylvania and that consequently the Pennsylvania assessment of transfer inheritance tax, with respect to the intangible personal property of the said decedent, was illegal and invalid.

11. The judgment or decree of the Pennsylvania Supreme Court, adjudging that said John T. Dorrance at his death was domiciled in Pennsylvania and upholding the validity of Pennsylvania transfer inheritance tax with respect to the intangible personal property of said decedent was within the jurisdiction of said Court and is binding upon the [fol. 155] Courts of New Jersey, and upon the State Tax Commissioner of New Jersey.

12. The Ordinary erred in holding that the said judgment or decree of the Pennsylvania Supreme Court was not within the jurisdiction of said Court and is not binding upon the Courts of New Jersey or the State Tax Commissioner of New Jersey.

13. The State of New Jersey had no right or jurisdiction to levy a transfer inheritance tax with respect to the intangible personal property of the said John T. Dorrance, deceased, said decedent at his death not having been domiciled in New Jersey.

14. The Ordinary erred in holding that the decedent at his death was domiciled in New Jersey and that consequently the State of New Jersey had the right and jurisdiction to levy a transfer inheritance tax with respect to the intangible personal property of the said decedent.

15. The assessment of a transfer inheritance tax as made by the State Tax Commissioner of New Jersey on October 10, 1932, amounting to $12,247,333.52, hereinafter referred to as the New Jersey assessment, upon the transfer of the property of said John T. Dorrance, deceased, as that of a resident decedent, was erroneous, illegal and void insofar as said assessment related to intangible personal property of the said decedent, said decedent at his death not having been domiciled in New Jersey.

16. The Ordinary erred in holding that the decedent at his death was domiciled in New Jersey and that consequently the New Jersey assessment of a transfer inheritance tax was made by the State Tax Commissioner of New Jersey

on October 10, 1932, amounting to $12,247,333.52 upon the transfer of the property of said John T. Dorrance, deceased, as that of a resident decedent, was legal and valid insofar as said assessment related to intangible personal property of the said decedent.

[fol. 156] 17. The said New Jersey assessment of a transfer inheritance tax, with respect to the intangible personal property of the said John T. Dorrance, deceased, was erroneous, illegal and void because it was not authorized by the provisions of the Act of the Legislature of the State of New Jersey entitled, "An Act to tax the transfer of property of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale in certain cases," approved April 20, 1909, hereinafter called the New Jersey Transfer Inheritance Tax Act, and the supplements and amendments thereto, said decedent at his death not having been domiciled in New Jersey.

18. Said Ordinary erred in holding that the decedent at his death was domiciled in New Jersey and that consequently the aforesaid New Jersey assessment of a transfer inheritance tax with respect to the intangible personal property of the said decedent was authorized by the provisions of the New Jersey Transfer Inheritance Tax Act, approved April 20, 1909, and the supplements and amendments thereto.

19. The aforesaid New Jersey Transfer Inheritance Tax Act, approved April 20, 1909, its amendments and supplements, if authorizing said New Jersey assessment with respect to intangible personal property of said decedent (which prosecutors deny), deprive prosecutors of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States, in that the said John T. Dorrance at his death was not domiciled in New Jersey; and consequently said Act and said New Jersey assessment with respect to said intangible personal property are illegal and void.

20. The said Ordinary erred in holding that said decedent at his death was domiciled in New Jersey and that [fol. 157] consequently the said New Jersey Transfer Inheritance Tax Act, approved April 20, 1909, its amendments

and supplements, as construed by said Ordinary to authorize said New Jersey assessment with respect to intangible personal property of said decedent, do not deprive prosecutors of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

21. Said decree below and said New Jersey assessment of a transfer inheritance tax with respect to the intangible personal property of the said John T. Dorrance, deceased, deprive the prosecutors of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States, in that the said John T. Dorrance at his death was not domiciled in New Jersey; and consequently said decree below and said New Jersey assessment with respect to said intangible personal property are erroneous, illegal and void.

22. Said Ordinary erred in holding that said decedent at his death was domiciled in New Jersey and that consequently the said New Jersey assessment of a transfer inheritance tax with respect to the intangible personal property of the said decedent does not deprive the prosecutors of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

23. Said decree below and said New Jersey assessment with respect to the intangible personal property of said decedent are repugnant to the provisions of Section 1 of Article IV of the Constitution of the United States, in that they fail to give full faith and credit, as required by said constitutional provisions, to a certain decree of the Supreme Court of Pennsylvania, entered September 26, 1932, supplemented and affirmed by two certain orders of said Supreme Court, dated December 20, 1932 and January 10, [fol. 158] 1933 respectively, adjudging that said John T. Dorrance at his death was domiciled in Pennsylvania, and upholding the validity of Pennsylvania Transfer Inheritance Tax with respect to the intangible personal property of said decedent; and consequently said decree below and said New Jersey assessment with respect to said intangible personal property are erroneous, illegal and void.

24. Said Ordinary erred in holding that said New Jersey assessment with respect to the intangible personal prop-

erty of said decedent is not repugnant to the provisions of Section 1, Article IV, of the Constitution of the United States as aforesaid and in failing to give full faith and credit, as required by said constitutional provisions, to the said decree and supplemental orders of the Supreme Court of Pennsylvania.

25. Said decree below and said New Jersey assessment with respect to the intangible personal property of said decedent deprive the prosecutors of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States, and also fail to give full faith and credit to said decree and supplemental orders of the Supreme Court of Pennsylvania, in contravention of Section 1 of Article IV of the Constitution of the United States, in that said decree below and said New Jersey assessment require said estate of John T. Dorrance, deceased, to pay a second transfer inheritance tax on the same transfer of the same intangible personal property of the said decedent, on which said estate has already been compelled to pay a transfer inheritance tax to the Commonwealth of Pennsylvania; and consequently said decree below and said New Jersey assessment with respect to said intangible personal property are erroneous, illegal and void.

26. Said Ordinary erred in holding that said New Jersey assessment does not offend against either the said due [fol. 159] process clause or the said full faith and credit clause of the Federal Constitution in that said New Jersey assessment requires the said Estate of John T. Dorrance, deceased, to pay a second transfer inheritance tax on the same transfer of the same intangible personal property of the said decedent, on which the said Estate has already been compelled to pay a transfer inheritance tax to the Commonwealth of Pennsylvania.

27. Said Ordinary erred in determining the clear market value of the property of the said John T. Dorrance, deceased, by not allowing as a deduction, as required by the said New Jersey Transfer Inheritance Tax Act approved April 20, 1909, its amendments and supplements, the sum of $1,099,552.52 paid by the prosecutors to the Board for the Assessment and Revision of Taxes in the County of Delaware, in the Commonwealth of Pennsyl-

vania, the same being a settlement of a debt of the said decedent, John T. Dorrance, representing personal property taxes assessed against the said John T. Dorrance for each of the years 1926, 1927, 1928, 1929 and 1930.

28. Said Ordinary erred in determining the clear market value of the property of the said John T. Dorrance, deceased, by not allowing as a deduction, as required by the New Jersey Transfer Inheritance Tax Act, approved April 20, 1909, its amendments and supplements, the Pennsylvania transfer inheritance taxes amounting to $17,437,655.26, assessed against the said decedent's estate, upon the same transfer of the same intangible personal property of said decedent upon which the said State Tax Commissioner of the State of New Jersey made the New Jersey assessment, and payable to the Commonwealth of Pennsylvania, which said Pennsylvania Transfer Inheritance Taxes the said prosecutors were and are compelled to pay as and when due, and of which they were compelled to pay and paid the sum of $14,394,698.88 to the Commonwealth of Pennsylvania on March 31, 1933.

[fols. 160-166] 29. The Ordinary erred in entering the decree below under date of May 11th, 1934, affirming said New Jersey assessment, instead of cancelling and setting the same aside, for the reasons above set forth.

30. Said decree below of the Ordinary and the imposition of the said New Jersey transfer inheritance tax with respect to the intangible personal property of the Estate of said John T. Dorrance, deceased, are illegal, erroneous and unlawful for the reasons above set forth, and divers other reasons.

Wm. D. Lippincott, Attorney for Prosecutors.

[fols. 167 & 168] IN UNITED STATES DISTRICT COURT

In Equity

No. 5092

[Title omitted]

AMENDMENT TO ANSWER—Filed April 12, 1935

Defendants amend their joint and several answer as follows:

1. Amend paragraph 43 to read as follows:

43. They say that from the decree of the Prerogative Court, the executors obtained a writ of certiorari from the Supreme Court of the State of New Jersey, and they admit that on February 11, 1934 said court sustained said decree of the Prerogative Court; further answering they say that copies of the decision of the Supreme Court and of the judgment of said court sustaining said decree of the Prerogative Court are hereto annexed and made part hereof.

[fol. 169] They say that said judgment of the Supreme Court is final but that the same is subject to judicial review by the Court of Errors and Appeals of the State of New Jersey; further answering they say that under the laws of the State of New Jersey the executors may have such judicial review by the Court of Errors and Appeals, by an appeal to that court, as a matter of right, within one year after the date of the judgment of said Supreme Court; the executors have not taken an appeal to said Court of Errors and Appeals.

They admit that said tax cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or by a statutory proceeding in the Prerogative Court of New Jersey; further answering they say that said statutory proceeding is as follows:

"21. If it shall appear to the State Tax Commissioner that any tax which has accrued under this act has not been paid according to law said Commissioner shall report such fact, in writing, to the register of the Prerogative Court, and said register shall issue a citation citing the persons

or corporations interested in the property liable to said tax to appear before the Ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid; the service of such citation and the subsequent proceedings had thereon shall conform to the practice prevailing in the Prerogative Court. Upon the making of any decree the register of the Prerogative Court shall, upon the request of the State Tax Commissioner, furnish one or more copies of said decree, and the same shall be docketed and filed by the clerk of the Supreme Court, or by the county clerk of any county in this State, upon the request of the State Tax Commissioner, and the same shall have the same effect as a lien by judgment, and execution shall issue thereon according to the rules and practice appertaining to other judgments docketed and filed with said respective clerks.

[fol. 170] "22. Whenever the State Tax Commissioner shall have reason to believe that any tax is due and unpaid under this act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, he shall notify the Attorney-General of this State, in writing, of such failure to pay such tax, and the said Attorney-General, when so notified, if he have probable cause to believe that a tax is due and unpaid, shall prosecute the proceeding before the Ordinary of this State, as provided for in section twenty-one of this act, and the State Treasurer shall, on the warrant of the Comptroller, and the certification of the State Tax Commissioner, pay all the expenses of said proceeding."

2. Amend paragraph 44 to read as follows:

44. They deny that when defendant Martin, State Tax Commissioner, made his said assessment, and when the said assessment had been sustained by the said Prerogative Court, the administrative procedure provided by said inheritance tax act was at an end; and they say that the administrative procedure provided by the said inheritance tax act was at an end at the time the State Tax Commissioner of New Jersey had completed his assessment of the tax against the estate of the decedent on October 10, 1932.

They admit that under the Constitution and Laws of New Jersey, the Supreme Court of New Jersey, on certiorari, is

authorized to review the facts as well as the law and to take additional testimony.

They admit that on certiorari, said court is authorized to affirm, reverse or modify the assessment made by the State Tax Commissioner; any they say that on the review of the decree of the Prerogative Court sustaining said assessment, (with modifications), said Supreme Court sustained said decree and said assessment (as modified by said decree), and entered its judgment dismissing the writ of certiorari brought by the executors to review said decree; [fol. 171] further answering they say that said authority of said Supreme Court is one of the judicial powers of said court inherent therein, under the Constitution and Laws of the State of New Jersey, as one of the prerogatives of said court, to supervise the proceedings and to correct the errors of all statutory tribunals.

They deny that the action of said court in entering its said judgment, affirming as aforesaid the decree of said Prerogative Court, was administrative and not judicial; further answering they say that said judgment of said Supreme Court was by a court of competent jurisdiction in a proceeding between the same parties in interest, or their privies, as are the parties in interest, or their privies, in the present case, and that said judgment of said court is res judicata as between the executors and the defendants in this suit.

3. Amend paragraph 47 to read as follows:

47. They deny paragraph 47; except that they admit that on February 13, 1935, plaintiffs, by their counsel, notified defendant Martin, through his counsel, that plaintiffs intended to take an appeal to the New Jersey Court of Errors and Appeals from the judgment of the Supreme Court of New Jersey; they further admit that under the statutes of New Jersey, plaintiffs may take their appeal to the Court of Errors and Appeals at any time prior to February 11, 1936; they have no knowledge or information sufficient to form a belief as to plaintiffs' allegation that they will take such appeal prior to that date, unless in the meantime this action renders such appeal unnecessary; further answering said paragraph they say that no appeal has been taken by plaintiffs to the Court of Errors and Appeals; that because of the advice of plaintiffs' counsel to defendant Martin, through his counsel, that plaintiffs intended to take an ap-

peal to the New Jersey Court of Errors and Appeals, no action has been taken by these defendants, or otherwise, on [fols. 172-174] behalf of the State of New Jersey, to collect said tax, or to enforce the judgment of the Prerogative Court or of the New Jersey Supreme Court.

David T. Wilentz, Attorney General of New Jersey, Solicitor for Defendants. Duane E. Minard, George S. Hobart, Counsel.

[fol. 175] IN UNITED STATES DISTRICT COURT

In Equity

No. 5091—No. 5092

[Title omitted]

On Motion for Interlocutory Injunction

ANSWERING AFFIDAVIT OF WM. D. KELLY—Filed April 12, 1935

STATE OF NEW JERSEY,
County of Essex, ss:

William D. Kelly, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am one of the persons named as a defendant in each of the above entitled suits.

2. I am State supervisor of the Inheritance Tax Division of the State Tax Department of the State of New Jersey. Said division was originally created in 1909 in the Depart-
[fol. 176] ment of the Comptroller of the Treasury, and so remained until July 1, 1931, when it was transferred to the State Tax Department by Chapter 197, of the Laws of 1931 (N. J. P. L. 496).

3. I have been in charge of said division since April 1914. There is no statutory creation or designation of the office or position of "State Supervisor, Inheritance Tax Bureau, of the State of New Jersey," as alleged in the complaints filed herein.

4. I am an attorney-at-law of the State of New Jersey, having been admitted to the bar of the Supreme Court at the June term, 1901. For the past 24 years I have devoted my attention, professionally and officially, solely to the study and administration of transfer inheritance and estate tax laws of New Jersey, the other states, and of Congress, and have examined and kept familiar with the decisions on these subjects of the various state and federal courts.

5. I have read and compared the bills of complaint in the two above entitled suits and have read and compared the affidavits filed in each suit in support of the application for interlocutory injunction and find that the bill of complaint and the affidavits in Suit No. 5091 contain the same allegations; that the affidavits and bill of complaint in Suit No. 5092, contain the same allegations; and the bill of complaint in Suit No. 5091 and the bill of complaint in Suit No. 5092 are alike in all essential respects, except as to identity of plaintiffs and alleged grounds of jurisdiction, and this affidavit is intended to answer the bills of complaint and supporting affidavits in both suits.

6. I have been familiar with, and have followed closely, the litigations in the State of Pennsylvania and in the State of New Jersey, respecting the assessment and collection of [fol. 177] inheritance taxes upon the Estate of John T. Dorrance, deceased, referred to in the bills of complaint.

7. A complete official record in the case in the Pennsylvania Supreme Court, filed by the executors in the State Tax Department, as alleged in paragraph 34 of the complaint and in the twenty-second paragraph of the supporting affidavit of George Morris Dorrance, M. D., in Suit No. 5091, and paragraph 41 of the complaint and the twenty-second paragraph of the supporting affidavit of George Morris Dorrance, M. D., in Suit No. 5092, is submitted herewith to this court, and incorporated in this affidavit by reference, consisting of four bound pamphlets, each entitled as follows:

"In the Supreme Court of Pennsylvania, Eastern District

No. 41—January Term, 1932

Estate of John T. Dorrance, Deceased. Appeal of the Commonwealth of Pennsylvania,

Record

"Appeal from the Decree of the Orphans' Court of Delaware County, as of March Term, 1931, No. 120." Volume 1 (Exhibit 1-a), Volume 2 (Exhibit 1-b), Volume 3, "Exhibits" (Exhibit 1-c), Volume 4, "Exhibits—Photographs and Photostats," (Exhibit 1-d).

[fol. 178] 8. The printed "State of the Case," in the Supreme Court of New Jersey, entitled:

"New Jersey Supreme Court

Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance, and Camden Safe Deposit and Trust Company, Executors of the Last Will and Testament of John T. Dorrance, Deceased, Prosecutors,

vs.

J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, Respondent"

is submitted herewith, and incorporated in this affidavit by reference, and marked Exhibit 2.

9. The record before the State Tax Commissioner, before the Prerogative Court, and before the Supreme Court of New Jersey, is contained in the four printed volumes above referred to as Exhibits 1-a to 1-d, inclusive, and Exhibit 2, and the issues of the litigation in New Jersey were decided upon that record.

10. A complete abstract of testimony and exhibits contained in Exhibits 1-a to 1-d, inclusive, and Exhibit 2, contained in a printed book (entitled in the same case as Exhibit 2) as submitted to the New Jersey Prerogative Court and to the New Jersey Supreme Court as "Appendix to Respondent's Brief," is submitted herewith, and incorporated in this affidavit by reference, as Exhibit 3.

11. The executors of the estate of John T. Dorrance, deceased, were so appointed in the will of said decedent, dated May 15, 1928, as filed in the State Tax Department by said executors as a part of the proof submitted in the inheritance tax proceedings before the Comptroller of the Treas-
[fol. 179] ury and the State Tax Commissioner of the State of New Jersey. A copy of the pertinent parts of said will is annexed hereto as Exhibit 4.

12. On October 1, 1930, the executors, acting under the provisions of said will, filed with the Surrogate of the County of Burlington, State of New Jersey, a sworn petition for probate therof and for the issuance of letters testamentary thereon, and made proof, under oath, of the death and residence of decedent in the State of New Jersey, in accordance with the statutes and other laws of New Jersey, and on October 2, 1930, said Surrogate, pursuant to said petition and proofs, entered his order of probate of said will and issued letters testamentary thereon to said executors. A copy of the proceedings and order on said petition is attached hereto as Exhibit 5.

13. By virtue of said proceedings, shown in Exhibit 5, the executors undertook the administration of the estate of the decedent under the jurisdiction of the Orphans' Court of Burlington County, and the laws of the State of New Jersey, and have ever since continued to administer the estate, and are now administering the estate and exercising the powers of trust conferred upon them by said will, under and by virtue of said proceedings and under laws of New Jersey and the jurisdiction of the Burlington County Orphans' Court. No will of decedent has ever been probated, and no letters of administration have been applied for or granted on the estate of decedent, in Pennsylvania. His estate has, from the beginning, been administered according to the provisions of the will and solely under authority of said probate proceedings and the jurisdiction of the laws and courts of the State of New Jersey as the estate of a decedent resident thereof.

14. On or about October 15, 1931, said executors filed their petition for first accounting of the estate in the Burlington County Orphans' Court, and said accounting was allowed
[fol. 180] by Order of said Court on November 5, 1931. A

copy of the pertinent parts thereof are annexed hereto as Exhibit 6. The first item on Schedule "B" of said accounting (Ex. 6) is a legacy of $100,000 to Ethel M. Dorrance, one of the plaintiffs in Suit No. 5091, paid pursuant to the provisions of the Tenth section of the will of said decedent, as printed at page 195 on Exhibit 2. All of the items shown on Schedule "D" of said accounting (Ex. 6) are monthly payments made to the beneficiaries of said will under the Fourteenth section thereof, as printed at pages 197-210 of Exhibit 2, out of the income of said estate, including such monthly payments of $30,000 or more, to Ethel M. Dorrance, one of the plaintiffs in Suit No. 5091, and monthly payments of $10,000 to Elinor Dorrance Hill, the plaintiff in Suit No. 5092. In Schedule "F" of said accounting (Ex. 6) the assessment of New Jersey Inheritances Taxes was set up by the Executors and allowed by the court as a principal liability reserve. Schedule "K" of said accounting (Ex. 6) shows that the executors who are the plaintiffs in this court in Suit No. 5091, received allowances of commissions on the account of $900,000.

15. On or about November 5, 1932, said executors filed their second intermediary accounting in the Burlington County Orphans' Court which was allowed by order thereof entered on November 25, 1932. Extracts of the pertinent parts of said account are attached hereto as Exhibit 7. Schedule "D" of said accounting (Ex. 7) shows monthly payments since the previous accounting (Ex. 6) to the beneficiaries of said estate out of income of the estate, including payments of $35,000 or more per month to Ethel M. Dorrance, one of the plaintiffs in Suit No. 5091, and payments of $10,000 per month to Elinor Dorrance Hill, plaintiff in Suit No. 5092. In schedule "F" of said accounting (Ex. 7) said Executors set up an accrual for New Jersey [fol. 181] inheritance taxes as a principal liability reserve, which was allowed by said court in its order on that accounting. As shown by Schedule "K" of said accounting, (Ex. 7) said executors, plaintiffs in Suit No. 5091, received additional commissions on said Second Accounting of $600,000.

16. No accounting has been filed by said executors since the accounting allowed November 25, 1932, (Ex. 7), but deponent is informed and believes that monthly payments out of the income of said estate under said last will have continued down to the present time to the beneficiaries

shown in Schedule "D" in Exhibit 7, including large monthly payments to said Ethel M. Dorrance and said Elinor Dorrance Hill.

17. Solely by virtue of said probate proceedings said executors filed their amended petition of appeal in the New Jersey Prerogative Court and prosecuted the same to review the assessment made by the State Tax Commissioner on October 10, 1932, and solely by virtue of that authority they obtained and prosecuted their writ of certiorari in the New Jersey Supreme Court to review the final decree of the Prerogative Court, as hereinafter set forth, and solely by virtue of that authority they filed their complaint in this court in Suit No. 5091, and solely by virtue of any rights which she derived under said will and said probate proceedings, said Elinor Dorrance Hill filed her bill of complaint in this court in Suit No. 5092.

18. In paragraph 2 of each of the complaints the several defendants herein are correctly enumerated in their official titles, except for this deponent who has no statutory title as indicated therein.

19. I am familiar with the provision of the transfer inheritance tax laws of New Jersey, and have been for the past 24 years. I deny the allegation of the last sentence of [fol. 182] of paragraph 2 of the complaint in Suit No. 5091 and the third paragraph of the complaint in Suit No. 5092, and the corresponding paragraphs of the supporting affidavits, that all of these defendants are clothed under the laws of New Jersey with duties in the assessment and collection of transfer taxes. The only powers or duties with respect to the assessment of transfer inheritance taxes are those which were conferred upon the Comptroller of the Treasury prior to July 1, 1931, and have since been conferred solely upon the State Tax Commissioner. A printed copy of the transfer inheritance tax act, Chapter 228, Laws of 1909, as supplemented and amended to and including the year 1934, is herewith submitted to the court as Exhibit 8, and incorporated herein by reference. The only powers and duties existing under said laws with respect to compelling the collection of such taxes is provided in Section 21 of said act (p. 22 of Exhibit 8), which directs the State Tax Commissioner, in case of non-payment of tax, to report such fact, in writing, to the register of the Prerogative Court

and directs that such register shall issue a citation to the persons involved to appear before the Ordinary (which is the New Jersey Prerogative Court) on a day to be fixed therein, and Section 22 (pp. 22-3 of Exhibit 8) which directs the State Tax Commissioner in such case to notify the Attorney General, whose duty it is to then prosecute the proceedings before the Ordinary as prescribed in Section 21. The only persons named as defendants in these suits who are, under existing law, charged with any duty or power of assessment or collection of inheritance taxes are the State Tax Commissioner and the Attorney General.

20. Paragraphs 9, 10, 11, 12, 13, 14, 15, 16 and 18 of the complaint in Suit No. 5091, and paragraphs 17, 18, 19, 20, 21, 22, 23, 24 and 26 of the complaint in Suit No. 5092, and the corresponding paragraphs of the supporting affidavits [fol. 183] of George Morris Dorrance, M. D., and Charlotte Dorrance Wright, in both suits, do not accurately set forth, and are contrary to the facts with respect to the matters therein stated, as testified to by the testimony of said George Morris Dorrance, M. D., at pages 63a to 129a of the Pennsylvania record, Exhibit 1-a (abstracted at pages 52-8 of Exhibit 3) and by the plaintiff Arthur C. Dorrance at pages 129a-169a of Exhibit 1-a; (abstracted at pages 58-63 of Exhibit 3), and by the plaintiff Ethel M. Dorrance at pages 250a-358a of Exhibit 1-a; (abstracted at pages 73-85 of Exhibit 3), and as shown by other testimony and exhibits submitted on behalf of said executors in the various proceedings in the two states contained in Exhibits 1-a to 1-d, inclusive, and Exhibits 2 and 3.

21. In answer to the allegations in paragraph 26 of the complaint in Suit No. 5091, and paragraph 33 of the complaint in Suit No. 5092; and corresponding paragraphs of the supporting affidavits; at the request of the attorneys for the executors I attended as a witness at the trial at the Orphans' Court of Delaware County, Pennsylvania, to identify an exemplified copy of the bill for the assessment of New Jersey inheritance taxes upon the Dorrance Estate, which was presented to me by said attorneys at that trial and offered by them as their Exhibit C, (Exhibit 1-c, p. 961-a). That testimony is given in full at pages 169-a to 170-a of Exhibit 1-a, and is abstracted on page 63 of Exhibit 3.

22. Referring to the allegations of paragraph 28 of the complaint in Suit No. 5091, and paragraph 35 of the complaint in Suit No. 5092, and the corresponding allegations in the supporting affidavits, a true copy of the decision of the Pennsylvania Supreme Court on the application of the executors for a reargument of the Federal question, is attached hereto as Exhibit 9.

[fol. 184] 23. The assessment of October 17, 1931, of transfer inheritance tax against decedent's estate referred to in paragraph 32 of the complaint in Suit No. 5091 and paragraph 39 of the complaint in Suit No. 5092, and the corresponding paragraphs of the supporting affidavits, was made by the State Tax Commissioner on the proofs and documents submitted on behalf of the Executors by their proctor, as appointed in Section Thirty-fifth of said will (Exhibit 2, pp. 227-8), to the Comptroller of the Treasury and the State Tax Commissioner, respectively, including an Inheritance Tax Return and an amended Inheritance Tax Return signed and sworn to by the said Executors and printed in full, as a part of the return of the Prerogative Court to a writ of certiorari from the New Jersey Supreme Court, at pages 97-105, 124-228 of Exhibit 2. Included in that return is a finding of fact of the Comptroller of the Treasury, dated May 13, 1931, as follows:

"After a careful consideration of all available data, including oral statements submitted by you, (Hon. William D. Lippincott, Proctor for the executors) during your recent appearance, the Department has concluded that the legal domicile of the decedent at the date of his death and for many years prior thereto was Cinnaminson, Burlington County, New Jersey." (State of the Case, Exhibit 2, page 163.)

24. The assessment of October 10, 1932, referred to in Paragraph 34 of the complaint in Suit No. 5091, and paragraph 41 of the complaint in Suit No. 5092, and the corresponding paragraphs of the supporting affidavits, was made after additional proof and documents had been submitted on behalf of the Executors by their proctor, as mentioned in paragraph 23, to the State Tax Commissioner, which additional proof appears in Exhibits 1-a, 1-b, 1-c and 1-d, and Exhibit 2, as abstracted in Exhibit 3, pages 20-158.

[fol. 185] 25. Deponent denies that the decision of the Pennsylvania Supreme Court was based upon the same evidence submitted to the State Tax Department and to the Courts of New Jersey, and says that Exhibit 2 contains much proof submitted on behalf of the Executors before the State Tax Department which was not included in the record of the Pennsylvania proceedings, (Exhibit 1-a and 1-d inclusive.)

26. Section 18 of the New Jersey Transfer Inheritance Act, (p. 21, Exhibit 8) provides:

"Any person of corporation dissatisfied with said appraisement or assessment may appeal therefrom to the Ordinary of this State within sixty days after the making and filing of such assessment, or giving a bond, approved by the Ordinary of this State, conditioned to pay said tax so as aforesaid levied by the said State Tax Commissioner, together with interest and costs, of said tax be affirmed by the Ordinary."

And Section 20 of said Act, (page 22, Exhibit 8), provides:

"The Ordinary of this State shall have jurisdiction to hear and determine all questions in relation to any tax levied under the provisions of this act."

27. Pursuant to these provisions of the Statute, the Executors appealed to the Ordinary by amended petition of appeal filed March 14, 1933, as printed at pages 7 to 18, inclusive, in the "State of the Case" in the New Jersey Supreme Court, (Exhibit 2) to which petition of appeal one of the defendants here, J. H. Thayer Martin, State Tax Commissioner, joined issue in the answer and answer in lieu of pleas filed March 28, 1933, as printed at pages 77 to 89 in the "State of the Case" in the New Jersey Supreme Court, (Exhibit 2), and said case was duly heard and argued in the Prerogative Court of the State of New Jersey and decided in the conclusions of the Court filed February [fol. 186] 7, 1934, printed at pages 271 to 287 of Exhibit 2, and in the supplemental conclusions filed May 10, 1934, printed at pages 288 to 293 inclusive of Exhibit 2, and on May 8, 1934, a final decree was accordingly entered in the New Jersey Prerogative Court, as printed at pages 294 to 297 of Exhibit 2, awarding a liquidated money judgment of

$12,247,333.52, which, together with the addition of lawful interest and costs may be docketed as a judgment in the New Jersey Supreme Court and execution issued thereon.

28. The Executors on July 6, 1934, applied to the New Jersey Supreme Court and obtained a writ dated that day, issuing out of said Court to the Ordinary and Judge of the Prerogative Court of the State of New Jersey to review the above mentioned final decree of the Prerogative Court. Said writ is printed at pages 1 and 2 of Exhibit 2. The reasons assigned and filed by the Executors on August 4, 1934, on said writ of certiorari are printed at pages 298-306 of Exhibit 2.

29. Hearing and argument on said writ came on for independent judicial determination of all questions of fact and law before the Supreme Court of the State of New Jersey at the October Term, 1934, on the record contained in Exhibits 1-a to 1-d, inclusive, and Exhibit 2, and that Court rendered its decision on February 8, 1935, a true copy of which is annexed hereto as Exhibit 10, and a rule for judgment thereon was accordingly entered February 11, 1935, affirming the decision of the Prerogative Court and dismissing the writ. A true copy of said rule for judgment is annexed hereto as Exhibit 11.

30. The subject-matter and the issues of fact and law presented in the amended petition of appeal (Ex. 2, pp. 7-18) and the answer, and answer in lieu of plea (Ex. 2, pp. 77-89), and determined in the Prerogative Court, and in the reasons filed by the executors under their writ of [fol. 187] certiorari and determined in the New Jersey Supreme Court (Ex. 2, pp. 298-306), are the same as those presented by the complaints and supporting affidavit in these cases, and the parties were the same in the proceedings in the courts of New Jersey as between the executors and the State Tax Commissioner as in the complaint in Suit No. 5091 in this court, and the defendant as far as the State Tax Commissioner is concerned, was the same defendant or respondent in the New Jersey courts as in complaint No. 5092 and the plaintiff therein was privy to, and bound by, the proceedings in the New Jersey Courts instituted by the Executors on her behalf, (pp. 102 and 104, Exhibit 2; Exhibits 4 and 5).

31. All the questions of law and fact and the subject-matter at issues presented by the complaints in these cases are res judicata.

32. With respect to the allegation in paragraph 38 of the complaint in Suit No. 5091 and paragraph 45 of the complaint in Suit No. 5092, and the supporting affidavits in both cases that these defendants threatened to collect said transfer inheritance taxes, deponent says that Sections 21 and 22 of the New Jersey Transfer Inheritance Tax Laws (pp. 22-3; of Exhibit 6) provide the means for enforcing the collection of the tax. The initiation of such proceedings rests solely with the State Tax Commissioner and the only other state officer having power to prosecute is the Attorney General, who is directed, only if and when the State Tax Commissioner initiates such a proceeding, to prosecute the same as required in Section 21 of the Act. The State Tax Commissioner has made no report, in writing, to the register of the Prerogative Court and the register of the Prerogative Court has issued no citations to these plaintiffs to appear to show cause why the tax should not be paid, as provided in Section 21 of the Act, and the State Tax Commissioner has not notified the Attorney Gen- [fol. 188] eral in writing of such failure to pay the tax and no proceedings has been prosecuted by the Attorney General before the Ordinary as provided in Section 22 of the Act.

33. Deponent denies the allegations of paragraph 43 of the complaint in Suit No. 5091 and paragraph 48 of the complaint in Suit No. 5092, and the corresponding paragraphs of the supporting affidavits, that because of any threat of these defendants or any of them to collect said tax, plaintiffs or any of them, have been compelled to maintain a large cash reserve at a low rate of interest and have been and are being prevented from selling, pledging, transferring or otherwise utilizing principal property of the decedent's estate of the appraised value of more than $81,000,000. He says that, with the exception of certain small direct bequests made in and certain small trusts created by decedent's will, the entire corpus of the estate is placed in trust in the custody and care of these executors as trustees by the Fourteenth Article of decedent's will (printed at pages 197-210 of Exhibit 2) to be administered by them in accord-

ance with the provisions of said will for a period not to exceed 16 years or until the happening of certain events and the falling in of certain contingencies described therein, so that there is no occasion, or right, to sell, pledge, transfer or otherwise utilize the principal property of said estate except as therein provided. With respect to the allegations concerning the substitution of securities in the second division of said paragraphs of the complaints, and affidavits, respectively this deponent says that the substitution of securities therein described is required under Section 12 of the Inheritance Tax Law (pp. 16-19; Exhibit 8); and that Section 5 of said act (p. 14; Exhibit 8) imposes a lien upon all the property of decedent for such taxes from the date of his death until secured by bond or otherwise pro-
[fol. 189] vided for in accordance with the terms of the act. Deponent further says that in the matter of the matured State bonds mentioned in said paragraphs, the State Tax Department did issue waivers on condition that other securities be pledged as alleged, and the executors entered into a voluntary agreement, in writing, with said State Tax Commissioner for that purpose, a true copy of which agreement is attached hereto as Exhibit 12. Said agreement provides that the substituted securities are to be registered in the names of the executors and held by the Camden Safe Deposit and Trust Company, one of the executors, under the joint control of it and the State Tax Commissioner, and the executors receive the interest on said bonds as it accrues. Respecting the third division of said paragraphs and affidavits, respectively, alleging that on June 26, 1934, in order to avoid the posting of a bond of upwards of $24,000,000, the executors placed in escrow securities with an appraised value of $12,360,000; deponent says that under the practice of the courts of New Jersey one who seeks to review a judgment by writ of certiorari, may be required to give bond or security in such amount as may be approved by the Court. On the application by the executors to the New Jersey Supreme Court for the writ of certiorari the court imposed a condition for the issuance of the writ, that plaintiffs furnish security either in the form of a bond or a deposit of adequate securities to secure the amount of the judgment. The Executors chose the second alternative and voluntarily offered to deposit said shares of stock, and voluntarily entered into an agreement with the State Tax Com-

missioner for that purpose. A copy of that agreement is attached hereto as Exhibit 13. It provides that such securities shall be delivered, without change in registration, to, and be held by, Camden Safe Deposit Trust Company, one of the executors, in escrow, under the joint control of it and the State Tax Commissioner. The Executors are free [fol. 190] to receive the dividends accruing on said securities and are not otherwise hampered in their ownership thereof. Said securities form part of the corpus of the estate held in trust by the Executors under Article Fourteenth of said will and cannot be sold, pledged, transferred or otherwise utilized, except as therein provided.

35. Deponent further says that if and when the Executors are free, and desire, to sell, pledge, transfer or otherwise utilize the bonds or stocks mentioned in paragraph 34 of this affidavit, or any other personal property of the estate, they may do so by giving bond or other security for the payment of the judgment for taxes or by substituting other satisfactory securities. In the present instance, the only security which said Executors have given for, or that is required pending the litigation of these taxes, is the deposit of said bonds and stock in escrow under the terms of said agreements (Exs. 12 and 13), and they are not by that arrangement deprived of any of the benefits or proceeds thereof, and at the same time they are relieved from giving bond, or paying premiums on a bond or other forms of security.

36. Plaintiffs in said suits are therefore not confronted, as alleged in paragraph 44 in suit No. 5091, and paragraph 49 in suit No. 5092, and the corresponding paragraphs in supporting affidavits, with any possible demands of defendants for bonds or securities, in addition to the security already provided by the deposit of the aforesaid bonds and stocks under said agreements (Exhibits 12-13).

37. Deponent denies the allegations of paragraph 45 of the complaint in suit No. 5091 and paragraph 50 of the complaint in suit No. 5092, and the corresponding paragraphs in supporting affidavits, that any threat of defend- [fol. 191] ants to collect said taxes renders impossible the proper administration and distribution of the estate; the proper administration and distribution of the estate is governed and controlled by the Fourteenth Article of dece-

dent's will, and not by any threat of defendants to collect the taxes. Deponent further says that there is nothing to prevent the plaintiffs from obtaining a waiver of all or any part of said estate except said bonds and stock which are now held in escrow under said agreements (Exhibits 12 and 13). Said Executors have had at all times, and still have, the right and privilege, insofar as the State of New Jersey or any of its officers are concerned, to apply for and obtain a waiver, releasing all of the remainder of said estate except said bonds and stocks so held in escrow, and such further security as may be necessary to cover additional taxes (not involved in these suits) that may hereafter become due upon the falling in of certain contingent remainders or estates in trust created by the will. The same is true of the allegations contained in paragraph 47 of the complaint, in suit No. 5091, and paragraph 52 of the complaint in suit No. 5092, and the corresponding paragraphs of supporting affidavits.

38. With respect to the allegations of paragraphs 48, 49, 50 and 51 of the complaint in suit No. 5091, and paragraphs 53, 54, 55 and 56 of the complaint in suit No. 5092, and the corresponding paragraphs of the supporting affidavits, deponent says that the Transfer Inheritance Tax law of New Jersey provides in Section 15 thereof (Exhibit 8, p. 20) as follows:

"When any amount of said tax shall have been paid erroneously to the State Tax Commissioner, it shall be lawful for the Comptroller of the Treasury on satisfactory proof rendered to State Tax Commissioner of such erroneous payments, and duly certified by him to the comptroller, to draw his warrant on the State Treasurer, in [fol. 192] favor of the executor, administrator, person or persons who have paid any such tax in error, or who may be lawfully entitled to receive the same, for the amount of such tax so paid in error; provided, that all such applications for the repayment of such tax shall be made within two years from the date of such payment."

And Section 24 of said act (Exhibit 8, p. 24) provides as follows:

"All amounts becoming due under the provisions of this act shall be paid from the same fund provided in the

annual appropriation bill for the payment of refunds to estates pursuant to section fifteen, chapter two hundred and twenty-eight, laws of one thousand nine hundred and nine, as amended * * *."

Item "D-17, State Tax Department" of the annual appropriation act of the Legislature of New Jersey for the year 1934 (Chapter 232, N. J. P. L. at p. 580), provides as follows:

"Upon approval of the State Tax Commissioner, the Comptroller of the Treasury is hereby authorized and it shall be his duty, to withdraw from the state fund such amounts as shall be required to carry out the provisions of Chapter 238, Laws of 1909, and to refund and pay such claims as may be necessary and the State Treasurer shall pay same upon the warrants of said State Comptroller, and there is hereby appropriated an amount necessary therefor."

The "Claims" referred to in said act are claims of refunds made under the provisions of Section 15 of the Transfer Inheritance Tax law above quoted. A like provision has existed in the annual appropriation acts of the Legislation of the State of New Jersey for many years past, and it is the practice to include the same provision in each annual appropriation act. All refunds which have been made in the past under Section 15 of the Transfer [fol. 193] Inheritance Act have been paid out of such provisions of the annual appropriation acts. Deponent further says that Chapter 255 of the Laws of 1934 (N. J. P. L. 717), referred to in paragraphs 48 and 53 of said complaints, respectively, provides, in sections 14, 15 and 16 (N. J. P. L. 1934, pp. 721-722), that funds to meet the interest and principal upon said $10,000,000 of bonds, as they mature, shall be paid first out of the proceeds of the licensing of the sale and delivery of alcoholic beverages, and if that source is insufficient; second, out of moneys received for inheritance taxes in certain classes of cases therein defined, including the case in question, and if either of the first and second sources are not realized, or are insufficient; third, then out of an assessment levied and collected annually in each of the municipalities of the counties of New Jersey upon real and personal property.

Said bond issue does not therefore depend primarily upon the taxes collected from decedent's estate, and such taxes, if erroneously or illegally paid, are recoverable under the aforesaid provision of law. Deponent further says that under the laws and practice of New Jersey, if the State Tax Commissioner, the Comptroller of the Treasury, and the State Treasurer, or any of them, should fail or refuse to act in the matter of refunds in accordance with the provisions of Section 15 of the Inheritance Tax Act in case of any taxes erroneously or illegally paid by plaintiffs, they have an adequate remedy at law by mandamus or certiorari, as the case may be, in either state or federal courts having competent jurisdiction in the premises, to compel such action or to review any refusal to do so by the State Tax Commissioner, the Comptroller of the Treasury and the State Treasurer, or any of them. It is the established law of the state that the New Jersey Supreme Court will in circumstances like the present case, compel a refund of taxes erroneously paid, and that said provisions of the law are applicable where a tax imposed [fol. 194] has been adjudged unlawful in whole or in part, and that such statutes enable the court, in proper proceedings, to compel the restoration of the tax unlawfully paid, and that under such statutory provisions the court can administer complete justice between the state and the taxpayer, without restraining the collection of the tax. The financial resources of the State of New Jersey are ample to pay any refunds of taxes erroneously or illegally paid by said Executors. For the year 1934 the total ratables of real and personal property in the State of New Jersey (exclusive of property taxed by license, gross receipts or excise taxes in lieu of all other taxes) was in excess of five billion nine hundred million dollars.

39. Respecting the allegations contained in paragraphs 58 and 63 of the complaints, respectively, and the corresponding paragraphs of the supporting affidavits, the deponent says that neither the State of New Jersey nor any of these defendants, nor any officer of the State of New Jersey, was a party to the suit of the Executors in the State of Pennsylvania, and neither the judgment of March 27, 1933 of the Supreme Court of Pennsylvania nor the judgment of March 29, 1933 of the Orphans' Court of Delaware County, Pennsylvania, mentioned in paragraphs 30

and 37 of the complaints, respectively, and the corresponding paragraphs of the supporting affidavits, was ever established or entered as a judgment in any court of the State of New Jersey or of the United States.

40. With respect to the allegations of paragraphs 59 and 60 of the complaint in suit No. 5091 and paragraphs 64 and 65 of the complaint in suit No. 5092, and the corresponding paragraphs of the supporting affidavits, deponent says that the plaintiffs in either suit are not threatened with irreparable injury unless this court grants equitable relief, and that the plaintiffs are not without [fol. 195] adequate remedy at law, because the executors may at any time within one year from the entry of the judgment in the New Jersey Supreme Court, review the same as a matter of right, under Section 25 of the Practice Act of New Jersey (N. J. P. L. 1916, p. 109) and New Jersey Supreme Court rules 137 to 147 inclusive, on appeal to the Court of Errors and Appeals, the court of last resort in New Jersey, which appeal operates as a stay in all proceedings under the judgment of the New Jersey Supreme Court, and from any judgment of the Court of Errors and Appeals, if the same be adverse to the Executors, they may review the same in the Supreme Court of the United States, in accordance with the statutes, and the practice of that court. Such appeal to the Court of Errors and Appeals, and such right of review of its judgment in the Supreme Court of the United States, affords to plaintiffs in suit No. 5091, and the plaintiff in suit No. 5092 as represented by said Executors, the opportunity to avoid irreparable injury, and affords to them an adequate remedy at law.

William D. Kelly.

Sworn and subscribed before me this 6th day of April, 1935.

Vera E. Castellano, Notary Public of New Jersey.
(Seal.)

[fol. 196] EXHIBIT 4 TO AFFIDAVIT

Extracts from Last Will and Testament of John T. Dorrance, Deceased

I, John T. Dorrance, of the Township of Cinnaminson, in the County of Burlington and State of New Jersey,

being of sound and disposing mind, memory and understanding, do make and publish this, my last will and testament, hereby revoking any and all will or wills heretofore by me at any time made.

* * * * * * *

Seventh: I give and bequeath unto my wife, Ethel M. Dorrance, all my clothing, and all of my furniture and furnishings and household goods and household effect of every kind and description whatsoever, including silverware, china and glassware, rugs and pictures which I shall own at the time of my decease, excepting my grandfather's clock above bequeathed and excepting all tapestries; all of the furnishings and furniture and household goods and household effect of every kind and description, now used by my wife and myself in the house where I now reside in Cinnaminson Township, Burlington County, New Jersey, and elsewhere, excepting my grandfather's clock above bequeathed and excepting all tapestries, being the property of my said wife, Ethel M. Dorrance.

* * * * * * *

Sixteenth: I hereby nominate, constitute and appoint my said wife, Ethel M. Dorrance, my brother, George Morris Dorrance, M. D., my brother, Arthur C. Dorrance, and Camden Safe Deposit and Trust Company, of Camden, New Jersey, Executors of this, my last will and testament.

* * * * * * *

[fol. 197] Seventeenth: And I do hereby nominate, constitute and appoint my said wife, Ethel M. Dorrance, my said brother, George Morris Dorrance, M. D., my said brother, Arthur C. Dorrance, and Camden Safe Deposit and Trust Company, Trustee under this, my last will and testament.

* * * * * * *

Eighteenth: I do hereby nominate, constitute and appoint Camden Safe Deposit and Trust Company of Camden, New Jersey, Guardian of my said children until they shall respectively arrive at the age of twenty-one years,

and I do hereby authorize and empower said Camden Safe Deposit and Trust Company, as such Guardian of my said children to expend for the maintenance, support and education of my respective children while they shall be under the age of twenty-one years, such part of the income of my estate as shall be paid to said guardian of my said children respectively, and/or such part of the income of the moneys which shall be held by said Guardian of my said children, respectively, as in the sole discretion of said Guardian, shall seem fit and proper, without obtaining any order of the Court authorizing such use of said income, and notwithstanding the fact that my wife may have ample means to maintain, support and educate my said children while they shall be under the age of twenty-one years.

• • • • • • •

"Twenty-eighth: And I do hereby order and direct that if any person who shall be entitled to any interest whatever in my estate under the provision of this, my last will and testament, shall take any proceedings to contest or prevent the probate of this, my last will and testament, or if any proceedings, shall be taken on behalf of any such person to contest or prevent the probate of this, my last will and testament, then such person by or on whose behalf such proceedings shall be taken, shall receive no interest, income [fol. 198] or benefit whatsoever under this, my last will and testament, and any legacy or interest given or bequeathed to such person under this, my last will and testament, is hereby revoked."

• • • • • • •

Thirty-third: I hereby order and direct that if my said wife, Ethel M. Dorrance, or my said brother, George Morris Dorrance, M. D., or my said brother, Arthur C. Dorrance, or said Camden Safe Deposit and Trust Company, Executors of this, my last will and testament, or any of them shall fail or refuse to make application to the Surrogate of the County of Burlington, or to the Ordinary of the State of New Jersey, for the probate of my last will and testament within thirty days after the date of my decease, then such one or more of my said Executors so failing or refusing to make application to the said Surrogate or to the said Ordinary for the probate of my said last will and testament

within thirty days after the date of my decease, shall cease to be such Executor or Executors and Trustee or Trustees, and the appointment in my said last will and testament of such one or more of my said Executors primarily nominated and appointed in and by this, my last will and testament, who shall fail or refuse to make application to the said Surrogate or to the said Ordinary for the probate of my said last will and testament within thirty days after the date of my decease, shall cease and determine and be void and of no effect and as to such of my Executors primarily named in this, my last will and testament, as such Executors, as shall so fail or refuse to make application for the probate of this, my last will and testament, to the said Surrogate or to the said Ordinary within thirty days after my death, I revoke the appointment herein made as Executor or Executors and also as Trustee or Trustees.

* * * * * * *

[fol. 199] Thirty-sixth: I hereby order and direct that the provisions herein made by me for the benefit of my wife, Ethel M. Dorrance, are by me made and are to be by her accepted in lieu of her dower in any lands which I may own at the time of my decease.

In witness whereof, I, the said John T. Dorrance, have to this, my last will and testament, contained in this and the preceeding thirty-four pages of typewriting, set my hand and seal, this Fifteenth day of May, in the year of our Lord one thousand nine hundred and twenty-eight.

John T. Dorrance. (Seal.)

[fol. 200] EXHIBIT 5 TO AFFIDAVIT

Proceedings and order on the petition for probate and Letters Testamentary of the Will of John T. Dorrance, Deceased, filed by the Executors, October 1, 1930.

To M. E. Matlack, Surrogate of the County of Burlington, New Jersey.

In the matter of the Probate of the Last Will and Testament of John T. Dorrance, Deceased.

Petition for Probate and Letters Testamentary

The petition of Ethel M. Dorrance of Cinnaminson Twp., Burlington County, N. J., George Morris Dorrance, M. D.

of Philadelphia City and County, Penna., Arthur C. Dorrance of Riverton, Burlington County, N. J., and Camden Safe Deposit and Trust Company, a corporation of the State of New Jersey, Camden, N. J., respectfully showeth that they are the Executors named in the last Will and Testament of John T. Dorrance dated the 15th day of May, A. D. 1928. That said John T. Dorrance departed this life at his residence in Cinnaminson Twp., in the County of Burlington and State of New Jersey, on Sunday the 21st day of September A. D. 1930, leaving him surviving as his heirs at law and next to kin the following-named persons, to wit:

[fol. 201]	Kin	P. O. Address
Ethel M. Dorrance	widow	Riverton, N. J.
Elinor Dorrance Hill	daughter	993 Park Ave., New York City
Ethel M. Dorrance, Jr.	"	Riverton, N. J.
Charlotte K. Dorrance, 18 yrs.	"	" "
Margaret W. Dorrance, 14 "	"	" "
John T. Dorrance, Jr. 11 "	son	" "

The said testator was possessed of personal property to the value of ——

Therefore the said Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company respectfully apply for probate of the said Will and Testament ..... and for letters testamentary thereon.

Dated Oct. 1, A. D. 1930.

Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance, Camden Safe Deposit and Trust Company, by Ephraim Tomlinson, President. (Seal.)

[fol. 202] BURLINGTON COUNTY, ss.:

Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Ephraim Tomlinson, President of Camden Safe Deposit and Trust Company named in the above application, being duly sworn and affirmed according to law did depose, declares and say that the matters and things set forth in the within application are true to the best of their knowledge and belief.

Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance, Ephraim Tomlinson.

Sworn, affirmed and subscribed before me at Camden, New Jersey, Oct. 1, A. D., 1930.

M. E. Matlack, Surrogate of Burlington County, N. J.

STATE OF NEW JERSEY,
County of Camden, ss:

Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance, and Ephraim Tomlinson, President of Camden Safe Deposit and Trust Co. being duly sworn and affirmed depose, declare and say that the within writing naming them the said Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur D. Dorrance and Camden Safe Deposit and Trust Company, Executors, contains the true last Will and Testament of John T. Dorrance, deceased, so far as they know and as they verily believe; that they will exhibit into the Surrogate's office of the County of Burlington at or before the expiration of three calendar months a true and perfect inventory of all and singular the goods and chattels, rights and credits of said deceased that have [fol. 203] or shall come to their knowledge or possession or to the possession of any other person for their use; that they will comply with the provisions of all Federal and State Laws concerning Inheritance Taxes; that they will well and truly perform their duties as such Executors by paying first the debts of said deceased, and then the legacies therein specified, so far as the assets of the estate can thereunto extend, and render a just and true account within twelve calendar months or when thereunto lawfully required.

Ethel M. Dorrance, George Morris Dorrance, M. D.,
Arthur C. Dorrance, Ephraim Tomlinson.

Sworn and affirmed and subscribed at Camden, County and State aforesaid, Oct. 1, A. D. 1930, before me.

M. E. Matlack, Surrogate of Burlington County, N. J.

[fol. 204] BURLINGTON COUNTY SURROGATE'S COURT

In the matter of the probate of the alleged Will of John T. Dorrance, deceased.

Order for Probate

Application having been made by Ethel M. Dorrance, Arthur C. Dorrance, both of Burlington County, George Morris Dorrance, M. D., of Phila. County, Pa., and Cam-

den Safe Deposit and Trust Company a corporation of the State of New Jersey, for probate of the last Will of John T. Dorrance deceased, and Letters Testamentary thereon, and the Surrogate having inquired into the circumstances and taken proof, and being satisfied of the genuiness of the Will produced, the validity of its execution and the competency of the testator, and the probate of said Will not having been contested and it appearing that the testator died more than ten days ago, it is on this second day of October, A. D. 1930, adjudged that the instrument offered for probate in this matter is the last Will and Testament of John T. Dorrance, deceased, and the same is hereby admitted to probate; and it is ordered that Letters Testamentary may be issued thereon to Ethel M. Dorrance, Arthur C. Dorrance, George Morris Dorrance, M. D., and Camden Safe Deposit and Trust Company, the Executors named in said Will who may qualify thereunder.

M. E. Matlack, Surrogate of Burlington County.

[fol. 205] STATE OF NEW JERSEY,
County of Burlington, ss:

I, M. E. Matlack, Surrogate of the County of Burlington, do certify the annexed to be a true copy of the last Will and Testament of John T. Dorrance late of the County of Burlington, deceased, and that Ethel M. Dorrance, Arthur C. Dorrance, both of Burlington County, George Morris Dorrance, M. D., of Phila. County, Pa., and Camden Safe Deposit and Trust Company, a corporation of the State of New Jersey, the Executors therein named, proved the same before me, and are duly authorized to take upon themselves, the administration of the estate of the testator, agreeably to the said Will; Witness my hand and seal of office, this second day of October in the year of our Lord one thousand nine hundred and thirty.

M. E. Matlack, Surrogate. (Seal.)

[fol. 206] EXHIBIT 6 TO AFFIDAVIT

Extracts from First Accounting of Executors of John T. Dorrance, Deceased, filed October 15, 1931, allowed November 5, 1931.

BURLINGTON COUNTY ORPHANS' COURT

In the matter of the estate of John T. Dorrance, deceased.

On Accounting. Petition.

To the Orphans' Court of the County of Burlington:

The Petition of Ethel M. Dorrance, George Morris Dorrance, Arthur C. Dorrance and Camden Safe Deposit and Trust Company, a Corporation of the State of New Jersey, shows as follows:

1. That your Petitioners are Executors of the last will and testament of the will of John T. Dorrance, deceased, who died on the Twenty-first day of September, A. D. One Thousand Nine Hundred and Thirty, duly appointed such by the Surrogate of the County of Burlington on the Second day of October, A. D. One Thousand Nine Hundred and Thirty, and herewith present their First Account of their administration of the aforesaid estate.

2. That the names and addresses of all the parties interested in said accounting, who are of full age, are:

Ethel M. Dorrance, Riverton, New Jersey.
[fol. 207] Elinor Dorrance Hill, 730 Park Avenue, New York, N. Y.
Ethel Dorrance Colket, Haverford, Pennsylvania.
Marie Dorrance Blake, Short Hills, New Jersey.
E. Winifred Dorrance Dudley, 721 J Avenue, Coronado, Cal.
Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit & Trust Company, Trustees under the last will and testament of John T. Dorrance, deceased, Broadway & Market Street, Camden, N. J.
Ethel M. Dorrance, one of the Trustees under the last will and testament of John T. Dorrance, deceased, Riverton, New Jersey.
George Morris Dorrance, M. D., one of the Trustees under the last will and testament of John T. Dorrance, deceased, 2101 Spruce Street, Philadelphia, Pa.
Arthur C. Dorrance, one of the Trustees under the last will and testament of John T. Dorrance, Deceased, 407 Bank Avenue, Riverton, N. J.

[fol. 208] Camden Safe Deposit and Trust Company, one of the Trustees under the last will and testament of John T. Dorrance, deceased, Broadway and Market Street, Camden, N. J.

George Morris Dorrance, M. D., 2101 Spruce Street, Philadelphia, Pa.

Arthur C. Dorrance, 407 Bank Avenue, Riverton, N. J.

3. That the names and addresses of all the parties interested in said accounting, who are minors over the age of fourteen (14) years, are: Charlotte K. Dorrance, Riverton, New Jersey.

Margaret W. Dorrance, Riverton, New Jersey.

4. That the names and addresses of all the parties interested in said accounting, who are minors under the age of fourteen (14) years, are: John T. Dorrance, Jr., Riverton, New Jersey.

Marie Louise Dorrance Hill, 730 Park Avenue, New York, N. Y.

George M. Dorrance, Jr., 2218 DeLancey Street, Philadelphia, Pa.

[fol. 209] Emily Fox Dorrance, 2218 DeLancey Street, Philadelphia, Pa.

Arthur Calbraith Dorrance, Jr., 407 Bank Avenue, Riverton, N. J.

David Ross Dorrance, 407 Bank Avenue, Riverton, N. J.

5. That the name and address of the legal guardian of Charlotte K. Dorrance, Margaret W. Dorrance and John T. Dorrance, Jr. minors, is: Camden Safe Deposit & Trust Company, Broadway at Market Street, Camden, N. J.

6. That the name and address of the Father, natural guardian of Marie Louise Dorrance Hill, minor, is: Nathaniel Peter Hill, 730 Park Avenue, New York, N. Y.

7. That the name and address of the Mother, of Marie Louise Dorrance Hill, minor, is: Elinor Dorrance Hill, 730 Park Avenue, New York, N. Y.

8. That the name and address of the Father, natural guardian of George Morris Dorrance, Jr. and Emily Fox Dorrance, minors, is: George Morris Dorrance, M. D., 2101 Spruce Street, Philadelphia, Pa.

[fol. 210] 9. That the name and address of the Father,

natural guardian of Arthur Calbraith Dorrance, Jr. and David Ross Dorrance, minors, is: Arthur C. Dorrance, 407 Bank Avenue, Riverton, N. J.

10. That the Summary of their Account follows:

These accountants charge themselves as follows:

These accountants charge themselves as follows:

By Amount of estate, as per inventory and Appraisement		$114,850,733.39
By Amount of Principal received during the period covered by this Account		6,010,824.98
Total Principal Charges		$120,861,558.37

These accountants pray allowance as follows:

To Amount of Principal disbursements, being expenses of administration, payment of debts of the decedent and payment of legacies	$1,150,162.06	
To Reserve for accounts payable which are now due and owing and which have therefore, been accrued on the books of the estate which are being kept on an accrual basis	12,849,774.18	13,999,936.24
Balance of Principal in the hands of the Executors, from which balance is to be deducted, commission, expenses and a Counsel fee		$106,861,622.13

These accountants further charge themselves as follows:

By Amount of income received during the period covered by this Account	$3,402,252.96
These accountants further pray allowance:	
To Amount of income disbursements	1,458,357.64
Income in hands of the Executors, cash	$1,943,895.32

[fol. 211]

These accountants further charge themselves:

By Amount of income accrued which is now due and receivable and which has, therefore, been accrued on the books of the estate which are being kept on an accrual basis	394,598.20
	$2,338,493.52

These accountants further pray allowance:

To Reserves for income payable to life tenants and federal income tax payable on income accumulated pursuant to the terms of the last will and testament of John T. Dorrance, deceased, which is now due and owing and which have, therefore, been accrued on the books of the estate, which are being kept on an accrual basis.	298,401.82
Balance of income in the hands of the Executors, as shown by the books of the estate, which are being kept on an accrual basis, which balance less commission, is to be distributed or accumulated in accordance with the terms of the decedent's will.	$2,040,091.70

Your Petitioners, therefore, pray that the said Account may be allowed and for the allowance of commission on this Account, also for the allowance of a Counsel Fee.

Ethel M. Dorrance, George Morris Dorrance, A. C. Dorrance, Camden Safe Deposit &Trust Company, By Frank S. Norcross, Vice President. Executors of the will of John T. Dorrance, deceased.

[fol. 212] State of New Jersey,
County of Camden, ss:

Ethel M. Dorrance, being duly sworn according to law on her oath, deposes and says: That she is one of the Petitioners in the foregoing Petition named, and that the matters and things therein contained are true to the best of her knowledge and belief.

Ethel M. Dorrance.

Sworn and subscribed to this 15th day of October, A. D. 1931, before me.

Sadie E. Allen, Notary Public, New Jersey.

My commission expires Feb. 7, 1932.

STATE OF NEW JERSEY,
County of Camden, ss:

George Morris Dorrance, being duly sworn according to law on his oath, deposes and says: That he is one of the Petitioners in the foregoing Petition named, and that the matters and things therein contained are true to the best of his knowledge and belief.

George Morris Dorrance.

Sworn and subscribed to this fourteenth day of October, A. D. 1931, before me.

C. M. Fisher, Notary Public for N. J. (Seal.)

My commission expires Jan. 30, 1936.

[fol. 213] STATE OF NEW JERSEY,
County of Camden, ss.:

Arthur C. Dorrance, being duly sworn according to law on his oath, deposes and says: That he is one of the Petitioners in the foregoing Petition named, and that the matters and things therein contained are true to the best of his knowledge and belief.

A. C. Dorrance.

Sworn and subscribed to this thirteenth day of October A. D. 1931, before me.

Anna M. Carson.
Notary Public of New Jersey. (Seal.) My commission expires April 18, 1933.

STATE OF NEW JERSEY,
County of Camden, ss.:

Frank S. Norcross, being duly sworn according to law on his oath, desposes and says: That he is Vice President of the Camden Safe Deposit and Trust Company, one of the Petitioners in the foregoing Petition named, and that the matters and things therein contained are true to the best of his knowledge and belief.

Frank S. Norcross.

Sworn and subscribed to this fourteenth day of October A. D. 1931, before me.

C. M. Fisher.

Notary Public for N. J. (Seal.) My commission expires Jan. 30, 1936.

[fol. 214]

Schedule "B"

Principal Account

Credit

1930			
Oct.	6	To Ethel M. Dorrance, legacy under the tenth clause of the decedent's will	$100,000.00

Schedule "D"

Income Account

Credit

1930			
Oct.	22	To Ethel M. Dorrance, income	30,000.00
	"	Elinor Dorrance Hill, income	10,000.00
	"	Ethel M. Dorrance, Jr. income	10,000.00
Nov.	7	" Camden Safe Deposit & Trust Company, guardian of Margaret W. Dorrance, income	10,000.00
	"	Camden Safe Deposit & Trust Company, guardian of Charlotte K. Dorrance, income	10,000.00
	"	Camden Safe Deposit and Trust Company, guardian of John T. Dorrance, income	20,000.00
	21	" Ethel M. Dorrance, income	30,000.00
	"	Elinor Dorrance Hill, income	10,000.00
	"	Ethel M. Dorrance, Jr., income	10,000.00
	"	Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income	10,000.00
	"	Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income	10,000.00
	"	Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income	20,000.00

[fol. 215]

1930			
Dec.	20	To Ethel M. Dorrance, income...	30,000.00
		" Elinor Dorrance Hill, income..	10,000.00
		" Ethel M. Dorrance, Jr., income.	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income....	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income....	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income.....	20,000.00
1931			
Jan.	21	" Ethel M. Dorrance, income...	30,000.00
		" Elinor Dorrance Hill, income..	10,000.00
		" Ethel M. Dorrance, Jr. income.	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income....	10,000.00
Jan.	21	To Camden Safe Deposit and Trust Company, Guardian of Charlotte K. Dorrance, income.....	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income.....	20,000.00
Feb.	21	" Ethel M. Dorrance, income....	30,000.00
		" Elinor Dorrance Hill, income..	10,000.00
		" Ethel M. Dorrance, Jr., income.	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income.....	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income....	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income.....	20,000.00
Mar.	21	" Ethel M. Dorrance, income....	30,000.00
		" Elinor Dorrance Hill, income..	10,000.00

[fol. 216]

1930				
Mar.	21	To Ethel M. Dorrance, Jr., income.		10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income....		10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income.....		10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, income.....		20,000.00
Apr.	21	" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income....		10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income....		10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income.....		20,000.00
		" Ethel M. Dorrance, income....		30,000.00
		" Elinor Dorrance Hill, income..		10,000.00
		" Ethel M. Dorrance, Jr., income.		10,000.00
	28	" Ethel M. Dorrance, balance of income for period 9/21/30 to 4/27/31 as follows:		
		Amount of income collected.....	$2,672,439.83	
		Less - reserve for 1/1/2 comm.....	40,086.60	
			$2,632,353.23	
		1/4 equals...	658,088.30	
		Less - payments on account.....	210,000.00	
		Balance due Ethel M. Dorrance.....		448,088.30
May	21	" Ethel M. Dorrance, income....		35,000.00
		" Elinor Dorrance Hill, income..		10,000.00

[fol. 217]

1931			
May	21	To Ethel M. Dorrance, Jr., income.	10,000.00
		Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income.....	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income.....	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income.....	20,000.00
	28	" Interest on assessment of income tax return for 1929 as per audit to 9/21/30. Interest from 9/21/30 to 5/29/31.....	269.34
June	22	" Ethel M. Dorrance, income....	35,000.00
		" Elinor Dorrance Hill, income..	10,000.00
		" Ethel M. Dorrance, Jr., income.	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income....	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income.....	20,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income...	10,000.00
July	21	" Ethel M. Dorrance, income....	35,000.00
		" Elinor Dorrance Hill, income..	10,000.00
		" Ethel Dorrance Colket, income.	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income....	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income.....	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income.....	20,000.00

[fol. 218]

1931			
Aug. 21	To	Ethel M. Dorrance, income....	35,000.00
	"	Elinor Dorrance Hill, income..	10,000.00
	"	Ethel Dorrance Colket, income.	10,000.00
	"	Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income.....	10,000.00
	"	Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income.....	20,000.00
	"	Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income....	10,000.00
			$1,458,357.64

Schedule "E"

Principal Dividends Accrued

Balance of dividend payable on 1,000,000 shares Campbell Soup Company, common stock.....	$29.25
	$29.25

Schedule "F"

Principal Liability Reserves

Accrual for estimated liability for completion of mausoleum to be erected in West Laurel Hill Cemetery, in accordance with the terms of the last will and testament of the decedent.....	$36,677.50
Accrual for federal income tax payable....	556,350.94
Accrual for New Jersey Transfer Inheritance Tax payable.....	12,256,509.89
Accrual for account due Price Waterhouse Co. for professional services rendered....	186.85
Accrual for amount due Camden Safe Deposit & Trust Company, for automobile hire.....	49.00
	$12,849,774.18

[fol. 219]

Schedule "K"

Expense Account

Principal

Surrogate's Charges	$62,389.25
Amount allowed to William D. Lippincott, Esq. as Counsel fees on Account	100,000.00
Amount allowed to Ethel M. Dorrance, George Morris Dorrance, Arthur C. Dorrance and Camden Safe Deposit & Trust Co., Executors of the last will and testament of John T. Dorrance, deceased, as commissions on Account	900,000.00
Total	$1,062,389.25

Income

Commission on $3,402,252.96 @ 1½%	$51,033.79

Ethel M. Dorrance, George Morris Dorrance, A. C. Dorrance, Camden Safe Deposit & Trust Company, By Frank S. Norcross, Vice President, Executors of the will of John T. Dorrance, deceased, Ethel M. Dorrance, George Morris Dorrance, A. C. Dorrance.

[fol. 220] State of New Jersey,
County of Camden, ss.:

Ethel M. Dorrance, being duly sworn according to law on her oath, deposes and says: That she is one of the Executors in the foregoing account named, and that the matters and things therein contained are true to the best of her knowledge and belief.

Ethel M. Dorrance.

Sworn and subscribed to this 15th day of October A. D. 1931 before me.

Sadie E. Allen.
Notary Public of New Jersey. My commission expires Feb. 7, 1932.

STATE OF NEW JERSEY.
County of Camden, ss.:

George Morris Dorrance, being duly sworn according to law on his oath, deposes and says: That he is one of the Executors in the foregoing account named, and that the matters and things therein contained are true to the best of his knowledge and belief.

George Morris Dorrance.

Sworn and subscribed to this fourteenth day of October A. D. 1931 before me.

C. M. Fisher,
Notary Public for N. J. (Seal) My commission expires Jan. 30, 1936.

[fol. 221]
STATE OF NEW JERSEY.
County of Camden, ss.:

Arthur C. Dorrance, being duly sworn according to law on his oath, deposes and says: That he is one of the Executors in the foregoing account named, and that the matters and things therein contained are true to the best of his knowledge and belief.

A. C. Dorrance.

Sworn and subscribed to this thirteenth day of October A. D. 1931 before me.

Anna M. Carson,
Notary Public of New Jersey. (Seal) My commission expires April 18, 1933.

STATE OF NEW JERSEY.
County of Camden, ss.:

Frank S. Norcross, being duly sworn according to law on his oath, deposes and says: That he is Vice President of the Camden Safe Deposit and Trust Company, one of the Executors in the foregoing Account named, and that the matters and things therein contained are true to the best of his knowledge and belief.

Frank S. Norcross.

Sworn and subscribed to this fourteenth day of October A. D. 1931 before me.

C. M. Fisher,
Notary Public for N. J. (Seal) My commission expires Jan. 30, 1936.

[fol. 222] I have audited and stated the within account and do report the same to the Court for allowance.

Elizabeth J. Matlack, Surrogate, by Mary E. Weest, Deputy Surrogate.

In the matter of the account of Ethel M. Dorrance, George Morris Dorrance, Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the estate of John T. Dorrance, deceased.

The Surrogate having audited and stated the within account, and placed the same on the files of his office and a notice of the settlement thereof having been published according to law, and the same being reported for allowance and settlement, and no objection made thereto, it is ordered and decreed that the said account be allowed in all things as reported.

Charles A. Rigg, Judge.

Dated, Nov. 5th, 1931.

[fol. 223] EXHIBIT 7 TO AFFIDAVIT

Extracts from Second Intermediary Accounting of Executors of John T. Dorrance, Deceased, filed November 5, 1932, allowed November 25, 1932

The Second Intermediate Account of Ethel M. Dorrance, George Morris Dorrance, Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the will of John T. Dorrance, deceased.

These Accountants charge themselves as follows:

Schedule "D"

Income Account

Credit

1931			
Sept. 18	To	Ethel M. Dorrance, income	$ 35,000.00
	"	Elinor Dorrance Hill, income	10,000.00
	"	Ethel Dorrance Colket, income	10,000.00
	"	Camden Safe Deposit & Trust Company Guardian of John T. Dorrance, Jr., income	20,000.00

		To Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income	10,000.00
Oct.	21	" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income	20,000.00
[fol. 224]			
		" Ethel M. Dorrance, income	35,000.00
		" Ethel M. Dorrance, income	35,000.00
		" Elinor Dorrance Hill, income	10,000.00
		" Ethel Dorrance Colket, income	10,000.00
Nov.	21	" Ethel M. Dorrance, income	35,000.00
		" Ethel Dorrance Colket, income	10,000.00
		" Elinor Dorrance Hill, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income	20,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income	10,000.00
		" Accumulated income collected and accrued during period 9/21/30 to 8/31/31 end of fiscal year transferred to principal account as follows, in accordance with the terms of decedent's will:	
		9/21/30 to 8/31/31	$3,796,591.82

		Income distributed 9/21/30—8/31/31 ...	1,628,500.30	
				2,168,081.52
1931				
Dec. 18	To	Ethel M. Dorrance, balance ¼ income due Ethel M. Dorrance covering period 9/21/30 — 8/31/31, end of first fiscal year.		
		Amount of income collected and accrued 9/21/30—8/31/31 ...	$3,402,252.96	
		Less commission and expenses ...	51,303.13	
		¼	3,350,949.83	
[fol. 225]				
		Ethel M. Dorrance, ¼ share	837,737.45	
		Less payment on account	798,088.30	
		Balance due covering period 9/21/30—8/31/31 ...		39,649.15
Dec. 21	To	Ethel M. Dorrance, income ...		35,000.00
	"	Ethel Dorrance Hill, income ..		10,000.00
	"	Ethel D. Colket, income		10,000.00
	"	Camden Safe Deposit & Trust Company, guardian of Charlotte K. Dorrance, income		10,000.00

		To Camden Safe Deposit & Trust Company, guardian of Margaret W. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, guardian of John T. Dorrance, Jr., income...	20,000.00
1932			
Jan.	21	" Ethel M. Dorrance, income...	35,000.00
		" Elinor Dorrance Hill, income	10,000.00
		" Ethel Dorrance Colket, income	10,000.00
		" Camden Safe Deposit & Trust Company, guardian of Margaret W. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, guardian of Charlotte K. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, guardian of John T. Dorrance, Jr., income...	20,000.00
[fol. 226]			
1932			
Feb.	23	To Ethel M. Dorrance, income..	35,000.00
		" Elinor Dorrance Hill, income	10,000.00
		" Ethel Dorrance Colket, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income...	20,000.00
Mar.	21	" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income	10,000.00

		To Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income...		20,000.00
1932				
Mar.	21	To Ethel M. Dorrance, income...		35,000.00
	"	Elinor Dorrance Hill, income		10,000.00
	"	Ethel Dorrance Colket, income		10,000.00
	"	Ethel M. Dorrance, ¼ net income from 9/11/31 to 3/21/32 collected as follows:		
		Gross income collected	$4,274,156.04	
		Less commission	64,112.34	
		¼	4,210,043.70	
		¼ income	1,052,510.92	
		Less payments on account ...	245,000.00	
				807,510.92

[fol. 227]

1932				
Apr.	21	To Ethel M. Dorrance, income...		35,000.00
	"	Elinor Dorrance Hill, income		10,000.00
	"	Ethel Dorrance Colket, income		10,000.00
	"	Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income		10,000.00
	"	Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income....		20,000.00
	"	Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income..		10,000.00
May	21	" Ethel M. Dorrance, income....		35,000.00
	"	Elinor Dorrance Hill, income..		10,000.00
	"	Ethel Dorrance Colket, income		10,000.00
	"	Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income		10,000.00

May	21	To Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income	20,000.00
June	21	" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income	20,000.00
		" Ethel M. Dorrance, income	35,000.00
		" Elinor Dorrance Hill, income	10,000.00
		" Ethel Dorrance Colket, income	10,000.00

[fol. 228]

1932			
June	21	To Ethel M. Dorrance, ¼ net income due 6/21/32 ..... $130,703.57 Less payment on account 105,000.00	25,703.57
1932			
June	29	" Camden Safe Deposit & Trust Company, collection charge on coupons of the County of Middlesex, deposited under date of May 31, 1932, insurance ..... $.40 Postage ..... .23	.63
July	21	" Camden Safe Deposit & Trust Company, Guardian of Margaret W. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income	20,000.00

		To Ethel M. Dorrance, income	35,000.00
		" Elinor Dorrance Hill, income	10,000.00
		" Ethel Dorrance Colket, income	10,000.00
Aug.	6	" Government check tax on check of $200,000 drawn on Camden Safe Deposit & Trust Company	.02
		" Government check tax charged by Guaranty Trust Company of New York	.34
		" Government check tax charged on check drawn against First Camden National Bank & Trust Company	.02
	22	" Camden State Deposit & Trust Company, Guardian of Margaret W. Dorrance, income	10,000.00

[fol. 229]

1932

Aug.	22	To Camden Safe Deposit & Trust Company, Guardian of Charlotte K. Dorrance, income	10,000.00
		" Camden Safe Deposit & Trust Company, Guardian of John T. Dorrance, Jr., income	20,000.00
		" Ethel M. Dorrance, income	35,000.00
		" Elinor Dorrance Hill, income	10,000.00
		" Ethel Dorrance Colket, income	10,000.00
	23	" Mailing costs on coupons of the following: $348,000 Bonds, City of New York. 450,000 Bonds, State of Tennessee. Insurance, postage and surcharging	2.51
			$4,180,948.68

Schedule "F"

Principal Liability Reserves

Accrual for Federal Estate Tax		
Estimated	$5,028,428.74	
Less—Amount Paid	4,359,413.82	
		669,014.92

Accrual for interest on Federal Estate Tax	37,837.72
Accrual for New Jersey Transfer Inheritance Tax (Estimated)	12,247,333.52
Accrual for interest on New Jersey Inheritance Tax (Estimated)	692,677.05
Accrual for Pennsylvania Inheritance Tax on tangible property (Estimated)	181.35
	$13,647,044.56

[fol. 230] Schedule "K"

Expense Account

Principal

Surrogate's Charges	$ 2,547.48
Amount allowed to William D. Lippincott, Esq. as Counsel fees on account	50,000.00
Amount allowed to Ethel M. Dorrance, George Morris Dorrance, Arthur C. Dorrance and Camden Safe Deposit & Trust Company, Executors of the last will and testament of John T. Dorrance, deceased, as commissions on account	600,000.00
Total	$652,547.48

Income

Commissions	75,560.47

Ethel M. Dorrance, George Morris Dorrance, A. C. Dorrance, Camden Safe Deposit & Trust Company, by Frank S. Norcross, Vice-President, Executors of the will of John T. Dorrance, deceased.

[fol. 231] State of New Jersey,
County of Camden, ss.:

Ethel M. Dorrance, being duly sworn according to law on her oath, deposes and says: That she is one of the Executors in the foregoing account named, and that the matters and things therein contained are true to the best of her knowledge and belief.

Ethel M. Dorrance.

Sworn and subscribed to this fifth day of November, A. D. 1932 before me.

Edmund A. Dale, Notary Public for New Jersey.
(Seal.)

My Commission Expires February 16, 1935.

STATE OF NEW JERSEY,
County of Camden, ss.:

George Morris Dorrance, being duly sworn according to law on his oath, deposes and says: That he is one of the Executors in the foregoing Account named, and that the matters and things therein contained are true to the best of his knowledge and belief.

George Morris Dorrance.

Sworn and subscribed to this fifth day of November, A. D. 1932, before me.

Edmund A. Dale, Notary Public for New Jersey.
(Seal.)

My Commission Expires February 16, 1935.

[fol. 232] STATE OF NEW JERSEY,
County of Camden, ss.:

Arthur C. Dorrance, being duly sworn according to law on his oath, deposes and says: That he is one of the Executors in the foregoing Account named, and that the matters and things therein contained are true to the best of his knowledge and belief.

A. C. Dorrance.

Sworn and subscribed to this fifth day of November, A. D. 1932, before me.

Edmund A. Dale, Notary Public for New Jersey.
(Seal.)

My Commission Expires February 16, 1935.

STATE OF NEW JERSEY,
County of Camden, ss.:

Frank S. Norcross, being duly sworn according to law on his oath, deposes and says: That he is Vice-President of the Camden Safe Deposit and Trust Company, one of the Executors in the foregoing Account named, and that the

matters and things therein contained are true to the best of his knowledge and belief.

Frank S. Norcross.

Sworn and subscribed to this fifth day of November, A. D. 1932, before me.

Edmund A. Dale, Notary Public for New Jersey.
(Seal.)

My Commission Expires February 16, 1935.

[fol. 233] BURLINGTON COUNTY, ss.

I have audited and stated the within account, and do report the same to the Court for allowance.

George B. Bitting, Surrogate.

In the matter of the second account of Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the estate of John T. Dorrance, deceased.

The Surrogate having audited and stated the within account, and placed the same on the files of his office and a notice of the settlement thereof having been published according to law, and the same being reported for allowance and settlement, and no objection made thereto, it is ordered and decreed that the said account be allowed in all things as reported.

Charles A. Rigg, Judge.

Dated, Nov. 25, 1932.

[fol. 234] EXHIBIT 9 TO AFFIDAVIT—Filed January 10, 1933

Decision Pennsylvania Supreme Court on reargument.

IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

No. 41, January Term, 1933

In Re Estate of John T. Dorrance, Deceased.

Appeal of Commonwealth of Pennsylvania.

Petition of Appellee for Reargument.

A general reargument of this case was not granted. Reargument was allowed under Rule 84, solely to permit the

appellee-executors formally to bring to the attention of this Court the fact that they had filed an amended petition in the court of first instance suggesting a question or questions under the due process clause of the Fourteenth Amendment. On the appeal to this Court, no reference to the matter was made in the arguments though provision therefor is expressly made in Rule 47. The executors now urge that we pass on those questions, suggested in the court of first instance, and reconsider the appeal on a theory not presented when the case was argued here. The Commonwealth objects to such reconsideration, contending that "They (the executors) deliberately elected to argue the [fol. 235] case as one arising under the law of Pennsylvania."

At the time that this Court decided the question of fact,—in its judgment, a matter for decision according to the law of Pennsylvania,—it was held, for the reasons stated in the opinion filed, that John T. Dorrance was domiciled in Pennsylvania. As no federal question was involved, or presented by the records or briefs or in the oral argument, for consideration in the decision of the basic matter of fact, none was considered or decided and none remains for decision.

No reason appears for modifying the decision originally made.

Justices Schaffer and Drew dissent from this order.

[fol. 236] EXHIBIT 10 TO AFFIDAVIT

NEW JERSEY SUPREME COURT

No. 251. October Term, 1934

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M. D., ARTHUR C. DORRANCE and CAMDEN SAFE DEPOSIT AND TRUST COMPANY, Executors of the Last Will and Testament of John T. Dorrance, deceased, Prosecutors,

vs.

J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey, Respondent.

Reported: 13 N. J. Misc. R. 168. Filed Feb. 8, 1935

Submitted October Term, 1934; decided February 8, 1935

Before Justices Trenchard, Heher and Perskie

For Prosecutors: John Milton (Nathan Miller and Harold Otis, of the New York Bar).

For Respondents: David T. Wilentz, Attorney-General, William H. Smathers, Assistant Attorney-General, and Duane E. Minard.

Per Curiam:

The writ of certiorari, in this case, brings up for review a final decree of the New Jersey Prerogative Court, dated May 11, 1934, affirming a transfer inheritance tax assessment, made by J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, in the matter of the [fol. 237] estate of John T. Dorrance, deceased, as made on October 10, 1932, and amounting to $12,247,333.52.

We have carefully studied and considered the voluminous records, proofs and briefs herein submitted. The opinions of Buchanan, Vice-Ordinary, in this matter when it came up before him for determination are reported in 115 N. J. Eq. 268, and 116 *Id.* 204. They disclose a very careful analysis and consideration of the proofs as well as the law applicable thereto; they are comprehensive, clear, sound and correct.

We are of the firm opinion that there has been nothing further presented to this court which would merit or justify a disturbance of the results reached by the learned Vice-Ordinary and with which we are in thorough accord.

Accordingly the decree brought up for review is sustained and the writ of certiorari is dismissed, with costs.

A true copy. Fred L. Bloodgood, Clerk.

[fol. 238] Exhibit 11 to Affidavit

New Jersey Supreme Court

Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the Last Will and Testament of John T. Dorrance, deceased, Prosecutors,

vs.

J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, Respondent.

On Certiorari. Rule.

This cause coming on to be heard at the October Term, 1934, of this Court, and the Court having inspected the re-

turn to the writ of certiorari issued therein and the Court having considered the reasons assigned for the setting aside of the transfer inheritance tax assessment in the matter of the estate of John T. Dorrance, deceased, as corrected by a decree of the Prerogative Court in the above-entitled cause, and the Court being of the opinion that said assessment, as corrected by said decree, should be affirmed.

It is, on this eleventh day of February, 1935, Ordered that the assessment of transfer inheritance taxes in the matter of the estate of John T. Dorrance, deceased, as corrected by the final decree of the Prerogative Court allowed May 11, 1934, be and the same is hereby affirmed and that [fols. 239-248] the writ of certiorari allowed herein be dismissed, with costs.

On motion of David T. Wilentz, Attorney General of New Jersey, Attorney for Respondent.

Entered: February 11th, 1935.

A true copy. Fred L. Bloodgood, Clerk.

[fol. 249] In United States District Court

[Title omitted]

In Equity No. 5092—No. 5091

Reply Affidavits—Filed April 20, 1935

[fol. 250] I. Affidavit of Gertrude Britton

Commonwealth of Pennsylvania,
County of Philadelphia, ss.:

Gertrude Britton, being duly sworn according to law deposes and says:

I was secretary to Dr. John T. Dorrance, from June 6, 1913, until September 1, 1930, when he died.

I kept Dr. Dorrance's books of account, in which are recorded his personal expenditures, and prepared all checks which Dr. Dorrance signed.

Dr. Dorrance paid $350,000 for the property known as "Woodcrest". Radnor, Delaware County, Pennsylvania, which he purchased in 1925. His expenditures for prepar-

ing "Woodcrest" for occupancy, and for furnishing and decorating it aggregated more than $350,000.

The cost of maintaining Dr. Dorrance's family at "Pomona Farms", Cinnaminson, New Jersey, for the years 1923 to 1925, inclusive, was as follows:

1923	$24,995.61
1924	29,843.36
1925	22,271.75

The cost of maintaining Dr. Dorrance's family at "Woodcrest", during the years 1926 to 1930 inclusive, was as follows:

1926	$89,605.67
1927	93,033.75
1928	95,226.14
1929	90,386.60
1930 (to Sept. 21)	66,429.81

Subject, however, to the fact that in 1928, 1929, and 1930, all of the house servants were taken with the family to Bar [fol. 251] Harbor for the summer, and the figures given, include their wages and commissary there during the summer months.

The expenditures at "Pomona Farms", Cinnaminson, New Jersey, for 1926 to 1930, inclusive, were as follows:

1926	$10,064.68
1927	10,344.29
1928	8,373.89
1929	6,459.90
1930 (to Sept. 21)	4,200.17

Dr. Dorrance's mother and sister, both of whom were ill, lived at "Pomona Farms" from August, 1926 until they died, his sister in the summer of 1928, and his mother, in January, 1929.

At the end of the year 1925, Dr. Dorrance instructed me to begin, on January 1, 1926, to keep a diary, showing where he spent each night. I kept such a record from January 1, 1926, until the date of Dr. Dorrance's death. Attached hereto and marked "Exhibit No. 1", is a correct transcript of the entries in the record. All of the entries in the record books were made by me or under my direction. I received

from Dr. Dorrance the information which I wrote in the books.

Gertrude Britton.

Sworn to and subscribed before me this seventeenth day of April, 1935.

H. L. Kober, Notary Public. (Seal.)

My commission expires January 14, 1939.

[fol. 252] Certificate of Prothonotary to Notary omitted in printing.

[fol. 253] EXHIBIT No. 1 TO AFFIDAVIT

Entries in Diary of Dr. John T. Dorrance

1926

Jan. 1, spent the night at Radnor, Pa.
Jan. 2, spent night at Radnor, Pa.
Jan. 3, spent the night at Radnor, Pa.
Jan. 4, spent the night at Radnor, Pa.
Jan. 5, spent the night at Radnor, Pa.
Attended meeting of Phila. National Bank Board at 9:45 a. m.
Jan. 6, spent the night at Radnor, Pa.
Jan. 7, spent the night at Radnor, Pa.
Jan. 8, spent the night at Radnor, Pa.
Attended Board of Directors meeting of West Jersey & Seashore Railroad—noon.
Jan. 9, spent the night at Radnor, Pa.
Jan. 10, spent the night at Radnor, Pa.
Jan. 11, spent the night at Cinnaminson, N. J., with Mrs. Dorrance.
Mrs. Fitler, Miss Fitler and Judge Lippincott called in the evening.
Attended meeting of Vestry of Christ Church, Riverton, N. J.
Jan. 12, attended Board Meeting of Phila. National Bank.
Spent night at Radnor, Pa.
Jan. 13, Attended Board Meeting of National Bank of Commerce in New York.
Spent the night at Radnor, Pa.
Jan. 14, spent night at Radnor, Pa.,

[fol. 254] Jan. 15, spent night at Bellevue-Stratford Phila, Pa.

Attended Mid-Winter Ball.

Jan. 16, spent the night at Radnor, Pa.

Jan. 17, spent the night at Radnor, Pa.

Jan. 18, dinner with Mr. Cranwell at Lotos Club, New York.

Returned to Phila. on 10.50 P. M. train.

Spent night at Radnor, Pa.

Jan. 19, attended meeting of Phila. National Bank Directors.

Spent night at Radnor, Pa.

Jan. 20, spent the night at Radnor, Pa.

Jan. 21, spent the night at Radnor, Pa.

Jan. 22, spent the night at the Bellevue Stratford Hotel, Phila., Pa.

Jan. 23, spent the night at Radnor, Pa.

Jan. 24, spent the night at Radnor, Pa.

Jan. 25, spent the night at Radnor, Pa.

Jan. 26, attended Directors' Meeting Philadelphia National Bank.

Spent night at Radnor, Pa.

Jan. 27, Campbell Soup Company Stockholders' meeting today.

Spent the night at Radnor, Pa.

Jan. 28, spent the night at Radnor, Pa.

Jan. 29, Campbell Soup Company (Delaware) today. Met at 10. a. m.

Spent the night at Radnor, Pa.

Jan. 30, spent the night at Radnor, Pa.

Jan. 31, spent the night at Radnor.

Feb. 1, spent the night at Radnor.

Feb. 2, attended meeting of Philadelphia National Bank Directors.

Spent the night at Radnor, Pa.

Feb. 3, spent the night at Radnor.

Feb. 4, spent the night at Radnor.

[fol. 255] Feb. 5, spent the night at Radnor.

Feb. 6, spent the night at Radnor.

Feb. 7, spent the night at Radnor.

Feb. 8, spent the night at Radnor.

Feb. 9, attended meeting of Phila. National Bank Directors.

Spent the night at Radnor.

Feb. 10, attended meeting of National Bank of Commerce in New York Directors.

Spent the night at Radnor.

Feb. 11, Spent the night at Radnor.

Feb. 12, spent the night at Cinnaminson, N. J. Mrs. Dorrance, Peggy & Jack stayed at Cinnaminson for the night; left about two P. M. next day.

Saw Mr. J. C. Shivers in the evening.

Feb. 13, spent the night at Radnor.

Feb. 14, spent the night at Radnor.

Feb. 15, spent the night at Radnor.

Feb. 16, spent the night at Bellevue-Stratford Hotel, Philadelphia.

Attended meeting of Board of Directors of Philadelphia National Bank.

Attended Bal Masque.

Feb. 17, spent the night at Radnor.

Feb. 18, attended special meeting of Philadelphia National Bank Directors.

Spent the night at Radnor.

Feb. 19, spent the night at Radnor.

Went to New York to look at rugs and tapestries.

Feb. 20, spent the night at Radnor.

Attended funeral of Mr. George Wood.

Feb. 21, spent the night at Radnor.

Feb. 22, spent the day and night at Radnor.

Holiday at the factory.

[fol. 256] Feb. 23, attended meeting of Philadelphia National Bank Board.

Dinner with Mr. Philip Stockton at N. Y. Yacht Club.

Spent night at N. Y. Yacht Club, New York.

Feb. 24, attended Board Meeting at National Bank of Commerce in N. Y.

Spent night at Radnor, Pa.

Feb. 25, attended Board meeting of Campbell Soup Company.

Spent night at Radnor.

Feb. 26, spent the night at Radnor.

Feb. 27, spent the night at Radnor.

Feb. 28, spent the night at Radnor.

March 1, spent the night at Radnor.

March 2, attended meeting of Phila. National Bank Directors.

Spent the night in the factory, Camden, N. J.

March 3, spent the night at Radnor, Pa.

March 4, spent the night at Cinnaminson with Mrs. Dorrance.

March 5, spent the night at Radnor.

March 6, spent the night at Radnor.

March 7, spent the night at Radnor.

March 8, spent the night at Radnor.

March 9, spent the night at Radnor.

Attended meeting of Philadelphia National Bank Directors.

March 10, attended meeting of National Bank of Commerce in New York Directors.

Spent the night at Radnor, Pa.

March 11, spent the night at Radnor.

March 12, attended meeting of West Jersey & Seashore Railroad Company Directors.

Two of the children, Peggy & Jack spent the night at Cinnaminson.

Spent the night at Radnor.

[fol. 257] March 13, spent the night at Radnor.

March 14, spent the night at Radnor.

March 15, spent the night at Radnor.

March 16, attended meeting of Board of Directors of Philadelphia National Bank.

Spent the night at Radnor.

March 17, spent the night at Radnor.

March 18, spent the night at Radnor.

March 19, attended Committee meeting in Phila. National Bank.

Spent the night at Radnor.

March 20, spent the night at Radnor.

March 21, spent the night at Radnor.

March 22, spent the night at Radnor.

March 23, attended meeting of Board of Directors of Philadelphia National Bank.

Spent the night at Radnor.

March 24, spent the night at Radnor.

March 25, attended meeting of Campbell Soup Company Directors.

Spent the night at Radnor.

March 26, attended meeting of Philadelphia & Camden Ferry Company Directors.

Spent the night at Radnor.

March 27, spent the night at Radnor.

March 28, spent the night at Radnor.

March 29, spent the night at Radnor.

March 30, spent the night at Pennsylvania Hotel, New York City.

Attended meeting of Philadelphia National Bank Directors.

March 31, attended meeting of National Bank of Commerce Directors.

Spent the night at Radnor.

April 1, spent the night at Radnor.

Attended meeting of Philadelphia-Girard National Bank.

[fol. 258] April 2, Spent the night at Radnor.

April 3, spent the night at Radnor.

April 4, spent the night at Radnor.

April 5, spent the night at Radnor.

April 6, attended Directors' meeting Philadelphia-Girard National Bank.

Spent the night at Radnor.

Mrs. Mallinckrodt, Peggy, Jack and nurse spent the night at Cinnaminson.

April 7, Mrs. Mallinckrodt, Peggy, Jack and nurse spent the night at Cinnaminson.

Spent the night at Radnor.

April 8, Mrs. Mallinckrodt, Peggy, Jack and nurse spent the night at Cinnaminson.

Spent the night at Radnor.

April 9, spent the night at the Ritz Carlton Hotel, Phila.

Attended meeting of Phila. & Camden Ferry Co. & West Jersey & Seashore R. R. Directors.

April 10, attended Gridiron Dinner, Washington, D. C.

Spent the night at New Willard Hotel, Washington, D. C.

April 11, spent the night at Radnor.

April 12, spent the night at Radnor.

April 13, attended meeting of Phila. National Bank Directors.

Spent the night at Ritz Carlton, Philadelphia.

April 14, attended meeting of National Bank of Commerce in New York.

Spent the night at Radnor.

April 15, attended meeting of Girard Trust Company Directors & Board of Managers.

Spent the night at Radnor.

April 16, spent the night at Radnor.

[fol. 259] April 17, spent the night Radnor.

April 18, spent the night at Radnor.

April 19, spent the night at Radnor.

April 20, attended meeting of Philadelphia-Girard Nation Bank Directors. Spent the night at Radnor.

April 21, spent the night at Radnor.

April 22, attended meeting of Girard Trust Company Directors. Spent the night at Radnor.

April 23, spent the night at Radnor.

April 24, spent the night at Radnor.

April 25, spent the night at Radnor.

April 26, spent the night at Radnor.

April 27, attended meeting of Philadelphia-Girard Directors. Spent the night at Radnor.

April 28, attended meeting of National Bank of Commerce in N. Y. Directors. Spent the night at Radnor.

April 29, attended meeting of Girard Trust Company Directors. Spent the night at Radnor.

April 30, Spent the night at Radnor. Mrs. Mallinckrodt, Peggy and Jack spent the day and night at Cinnaminson.

May 1, spent the night at Radnor. Dr. & Mrs. Dorrance visited Cinnaminson. Mrs. Mallinckrodt, Peggy and Jack spent the day at Cinnaminson.

May 2, spent the night at Radnor.

May 3, spent the night at Radnor.

May 4, attended meeting of Philadelphia-Girard National Bank Board. Spent the night at Radnor.

May 5, spent the night at Radnor.

[fol. 260] May 6, attended meeting of Girard Trust Company Board. Spent the night at Radnor.

May 7, spent the night at Radnor.

May 8, spent the night at Radnor.

May 9, spent the night at Radnor.

May 10, spent the night at Radnor.

May 11, spent the night at Pennsylvania Hotel, New York City.

May 12, at sea on way to France.

May 13, at sea on way to France.

May 14, at sea.

May 15, at sea.
May 16, at sea.
May 17, at sea en route for France.
May 18, landed at Cherbourg, France. Spent the night at Paris.
May 19, spent the night at Ritz-Hotel, Paris.
May 20, spent the night at Ritz Hotel, Paris.
May 21, Peggy, Jack & nurse spent the night at Pomona Farm, Cinnaminson, N. J. Spent the night at Ritz Hotel, Paris.
May 22, Peggy, Jack & nurse spent the day & night at Cinnaminson, N. J. Spent the night at Ritz Hotel, Paris.
May 23, Peggy, Jack & nurse spent the day at Cinnaminson. Spent the night at Ritz Hotel, Paris.
May 24, spent the night at Ritz Hotel, Paris.
May 25, spent the night at Ritz Hotel, Paris.
May 26, spent the night at Ritz Hotel, Paris.
May 27, spent the night at Ritz Hotel, Paris.
May 28, spent the night at Ritz Hotel, Paris.
May 29, spent the night at Ritz Hotel, Paris.
May 30, spent the night at Ritz Hotel, Paris.
May 31, spent the night at Ritz Hotel, Paris.
June 1, spent the night at Ritz Hotel, Paris.
[fol. 261] June 2, spent the night at Ritz Hotel, Paris.
June 3, spent the night at Ritz Hotel, Paris.
June 4, spent the night at Ritz Hotel, Paris.
June 5, spent the night at Ritz Hotel, Paris.
June 6, spent the night at Ritz Hotel, Paris.
June 7, spent the night at Ritz Hotel, Paris.
June 8, spent the night at Ritz Hotel, Paris.
June 9, spent the night at Ritz Hotel, Paris.
June 10, spent the night at Ritz Hotel, Paris.
June 11, Peggy, Jack & nurse spent the afternoon and night at Cinnaminson. Spent the night at Ritz Hotel, Paris.
June 12, Peggy, Jack & nurse spent the day & night at Cinnaminson. At sea returning to U. S. A.
June 13, Peggy, Jack & nurse spent the day at Cinnaminson. At sea.
June 14, at sea.
June 15, at sea.
June 16, at sea.
June 17, at sea.

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June 18, landed in New York at seven P. M. Spent the night at Radnor.

June 19, spent the night at Radnor.

June 20, spent the night at Radnor.

June 21, spent the night at Radnor.

June 22, spent the night at Radnor. Attended meeting of Philadelphia-GirardNational Bank Directors.

June 23, spent the night at Radnor.

June 24, spent the night at Radnor. Attended meeting of Girard Trust Co. Directors.

June 25, spent the night at Radnor.

June 26, spent the night at Radnor.

[fol. 262] June 27, spent the night at Radnor.

June 28, spent the night at Cinnaminson with Mrs. Dorrace, Peggy, Jack & nurse. Spent the afternoon with Mr. Hall & Mr. Shivers.

June 29, spent the night at Radnor.

June 30, spent the night at Radnor. Attended Directors Meeting Nat. Bank of Commerce in New York.

July 1, spent the night at Radnor. Attended-Girard Trust Co. Directors Meeting.

July 2, spent the night at Radnor.

July 3, spent the night at Radnor.

July 4, spent the night at Radnor.

July 5, spent the night at Radnor.

July 6, spent night at Radnor. Attended—Philadelphia-Girard National Bank Directors' Meeting.

July 7, spent night at Radnor. Peggy, Jack and 2 nurses at Cinnaminson.

July 8, spent night at Radnor. Attended meeting of Directors—Girard Trust Co.

July 8, Mr. Roland Taylor & Mr. Dillon for lunch. Peggy, Jack and 2 nurses at Cinnaminson.

July 9, spent night at Radnor. Attended meeting of Directors West Jersey & Seashore Railroad. Peggy, Jack and 2 nurses at Cinnaminson.

July 10, spent night at Radnor.

July 11, spent night at Radnor.

July 12, spent night at Radnor.

July 13, spent night at Radnor. Attended Board Meeting of Phila-Girard National Bank.

[fol. 263] July 14, in New York to attend Board Meeting of the National Bank of Commerce in N. Y. Spent the night at Radnor.

July 15, spent night at Radnor. Attended Meeting Board of Managers Girard Trust Co.

July 16, closed house at Radnor. Removed to home in Cinnaminson. Had dinner with Mr. Seligman. Spent night at Cinnaminson.

July 17, spent night at Cinnaminson.

July 18, went to Cape May for day. Spent night at Cinnaminson.

July 19, spent night at Cinnaminson.

July 20, attended Phila.-Girard National Bank meeting. Mr. Bowers for lunch. Spent night at Cinnaminson.

July 21, Captain Vandiver for lunch. Spent night at Cinnaminson.

July 22, attended Board Meeting Girard Trust Co. Went to Farmers' Club Dinner at home of Mr. Samuel Rea. Left on sleeper for Jamestown, R. I.

July 23, spent night at Bay View Hotel Jamestown, R. I.

July 24, spent night at Bay View Hotel Jamestown, R. I.

July 25, left Jamestown on night boat for New York.

July 26, spent night at Radnor.

July 27, attended meeting Board of Directors—Phila-Girard National Bank. To New York—Dinner with Mr. and Mrs. Faris Russell. Spent night in New York.

[fol. 264] July 28, attended meeting of National Bank of Commerce in N. Y.

July 29, attended Board Meeting Girard Trust Company. Tea with Mrs. Stotesbury. Spent night at Radnor.

July 30, left for Jamestown on sleeper.

July 31, spent night at Bay View Hotel, Jamestown, R. I.

Aug. 1, left Jamestown on night boat for New York.

Aug. 2, spent night at Radnor. Count Cresson for dinner.

Aug. 3, attended Board Meeting Phila. Girard National Bank. Spent night at Radnor.

Aug. 4, spent night at Radnor.

Aug. 5, spent night at Radnor.

Aug. 6, left for Jamestown on noon train. Spent night at Bay View Hotel Jamestown.

Aug. 7, spent night at Bay View Hotel, Jamestown, R. I.

Aug. 8, left Jamestown on night boat.

Aug. 9, spent night at Radnor.

Aug. 10, attended meeting Phila.-Girard National Bank. Spent night at Radnor.

Aug. 11, spent night at Radnor.

Aug. 12, attended meeting Girard Trust Company. Spent night at Radnor.

Aug. 13, to Jamestown, R. I. Spent night at Bay View Hotel.

Aug. 14, spent night at Bay View Hotel Jamestown, R. I.

Aug. 15, left Jamestown on night boat.

Aug. 16, spent night at Radnor.

[fol. 265] Aug. 17, Attended Board Meeting Phila.-Girard National Bank. Spent night at Radnor.

Aug. 18, spent night at Radnor.

Aug. 19, attended Board Meeting Girard Trust Company. Spent night at Radnor.

Aug. 20, left for Jamestown, R. I. on noon train. Spent night at Bay View Hotel.

Aug. 21, spent night at Bay View Hotel.

Aug. 22, left Newport on night boat.

Aug. 23, spent night at Radnor.

Aug. 24, attended Board Meeting Phila. Girard National Bank. Spent night at Radnor.

Aug. 25, attended Board Meeting National Bank of Commerce in N. J. Spent night at Radnor.

Aug. 26, attended Board Meeting Girard Trust Company. Spent night at Radnor.

Aug. 27, spent night at Radnor.

Aug. 28, spent night at Radnor.

Aug. 29, spent night at Radnor.

Aug. 30, spent night at Radnor. Mrs. John Dorrance and Mrs. Hood visited Cinnaminson.

Aug. 31, attended Board Meeting Philadelphia Girard Natl. Bank. Mrs. Dorrance, Charlotte, Peggy and Jack returned from Jamestown. Spent night at Radnor.

Sept. 1, spent night at Radnor.

Sept. 2, attended meeting Girard Trust Company.

Sept. 2, spent night at Radnor.

Sept. 3, spent night at Radnor.

[fol. 266] Sept. 4, spent night at Radnor.

Sept. 5, spent night at Radnor.

Sept. 6, spent night at Radnor.

Sept. 7, attended Board Meeting Phila.-Girard National Bank. Spent night at Radnor.

Sept. 8, spent night at Radnor.

Sept. 9, attended Board Meeting Girard Trust Company. Spent night at Radnor.

Sept. 10, spent night at Radnor.
Sept. 11, spent night at Radnor.
Sept. 12, spent night at Radnor.
Sept. 13, spent night at Radnor.
Sept. 14, attended Board Meeting Phila.-Girard National Bank. Spent night at Radnor. Peggy, Jack and two nurses spent night at Pomona Farm, Cinnaminson, N. J.
Sept. 15, spent night at Radnor. Peggy, Jack and two nurses spent night at Pomona Farm, Cinnaminson, N. J.
Sept. 16, attended Board Meeting Girard Trust Company. Attended Farmers' Club Dinner. Spent night at Radnor. Peggy, Jack and two nurses spent night at Pomona Farm, Cinnaminson, N. J.
Sept. 17, Peggy, Jack and two nurses spent night at Pomona Farm, Cinnaminson, N. J. Spent night at Cinnaminson.
Sept. 18, spent night at Radnor.
Sept. 19, spent night at Radnor.
Sept. 20, attended meetings—Phila. & Camden Ferry Co. West Jersey & Seashore Railroad. Spent night at Radnor.
[fol. 267] Sept. 21, attended Board Meeting Phila.-Girard National Bank. Spent night at Radnor.
Sept. 22, spent night at Radnor.
Sept. 23, attended Board Meeting Girard Trust Company. Attended Board Meeting Campbell Soup Company. Spent night at Radnor.
Sept. 24, spent night at Radnor.
Sept. 25, gunning at Sora Club. Spent night at Radnor.
Sept. 26, spent night at Radnor.
Sept. 27, spent night at Radnor.
Sept. 28, spent night at Radnor.
Sept. 29, spent night at Radnor.
Sept. 30, attended Board Meeting Girard Trust Company. Spent night at Radnor.
Oct. 1, at Cinnaminson. Spent night at Radnor.
Oct. 2, spent night at Radnor.
Oct. 3, at Cinnaminson, spent night at Radnor.
Oct. 4, at Cinnaminson, spent night at Radnor.
Oct. 5, attended Board Meeting Phila.-Girard National Bank. Spent night at Radnor.
Oct. 6, spent night at Radnor.
Oct. 7, attended Board Meeting Girard Trust Company. Spent night at Radnor.

Oct. 8, spent night at Radnor.
Oct. 9, spent night at Radnor.
Oct. 10, spent night at Radnor.
[fol. 268] Oct. 11, attended Board Meeting Phila.-Girard Natl. Bank. Attended Vestry Meeting Christ Church, Riverton. Dr. and Mrs. J. T. Dorrance. Spent night at Cinnaminson.
Oct. 12, spent night at Radnor.
Oct. 13, attended Board Meeting Natl. Bank of Commerce in New York. Spent night at Radnor.
Oct. 14, attended Board Meeting Girard Trust Company. Spent night at Radnor.
Oct. 15, spent night at Radnor.
Oct. 16, spent night at Radnor.
Oct. 17, spent night at Radnor.
Oct. 18, attended meeting Port Reading Co. Spent night at Radnor.
Oct. 19, attended Board Meeting Phila.-Girard National Bank. Spent night at Radnor.
Oct. 20, spent night at Radnor.
Oct. 21, attended Board Meeting Girard Trust Company. Spent night at Radnor.
Oct. 22, spent night at Radnor.
Oct. 23, spent night at Radnor.
Oct. 24, spent night at Radnor.
Oct. 25, spent night at Radnor.
Oct. 26, attended Board Meeting Phila.-Girard National Bank. Special Meeting—Board of Directors Pennsylvania Railroad. Spent night at Radnor.
Oct. 27, attended Board of Directors Meeting Pennsylvania Railroad. Spent night at Radnor.
[fol. 269] Oct. 28, attended Board Meeting Girard Trust Company.
Spent night at Radnor.
Oct. 29, spent night at Radnor.
Oct. 30, spent night at Radnor.
Oct. 31, spent night at Havre de Grace, Md.
Nov. 1, spent night at Radnor.
Nov. 2, Dr. & Mrs. Dorrance visited Cinnaminson and voted there.
Spent night at Havre de Grace, Md.
Nov. 3, spent night at Radnor.
Nov. 4, attended Board Meeting Girard Trust Company.
Spent night at Havre de Grace, Md.

Nov. 5, spent night at Radnor.
Nov. 6, spent night at Radnor.
Nov. 7, spent night at Havre de Grace, Md.
Nov. 8, spent night at Radnor.
Nov. 9, spent night in New York at New York Yacht Club.
Nov. 10, attended Meeting Pennsylvania Railroad.
Spent night at Radnor.
Nov. 11, spent night at Havre de Grace, Md.
Nov. 12, spent the night at Radnor.
Nov. 13, spent the night at Radnor.
Nov. 14, spent the night at Havre de Grace.
Nov. 15, spent the night at Radnor.
Nov. 16, attended three meetings at Philadelphia-Girard National Bank.
Spent the night at Radnor.
Nov. 17, spent the night at Radnor.
Nov. 18, attended meeting of Girard Trust Co.
Spent the night at Radnor.
Nov. 19, spent the night at Radnor.
Nov. 20, spent the night at Radnor.
Nov. 21, spent the night at Havre de Grace, Md.
[fol. 270] Nov. 22, spent the night at Radnor.
Nov. 23, spent the night at Radnor.
Attended meeting of Philadelphia Girard Bank Directors.
Nov. 24. Attended Meeting of Girard Trust Co. Directors.
Attended Meeting of Road Committee Pennsylvania Railroad Co.
Attended Meeting of Board of Directors of Pennsylvania Railroad Co.
Nov. 25, spent the night at Havre de Grace.
Nov. 26, spent the night at Radnor.
Nov. 27, spent the night at Radnor.
Nov. 28, spent the night at Havre de Grace.
Nov. 29, spent the night at Radnor.
Nov. 30, attended Meeting of Philadelphia-Girard National Bank.
Spent the night at Radnor.
Dec. 1, Spent the day in N. Y.
Spent the night at Radnor.
Dec. 2, attended Meeting of Girard Trust Co.
Spent night at Radnor.

Dec. 3, spent night at Radnor.
Dec. 4, spent night at Radnor.
Dec. 5, spent night at Radnor.
Dec. 6, spent night at Radnor.
Dec. 7, attended Board Meeting Philadelphia-Girard Bank.
Spent night at Radnor.
Dec. 8, attended Board Meeting National Bank of Commerce in New York.
Spent night at Radnor.
Dec. 9, attended Board Meeting Girard Trust Company.
Spent night at Radnor.
Dec. 10, spent night at Radnor.
Dec. 11, spent night at Radnor.
Dec. 12, spent night at Radnor.
[fol. 271] Dec. 13, spent night at Radnor.
Dec. 14, attended Board Meeting Philadelphia-Girard National Bank.
Spent night at Radnor.
Dec. 15, spent night at Radnor.
Dec. 16, attended Board Meeting Girard Trust Company
Spent night at Radnor.
Dec. 17, spent night at Radnor.
Dec. 18, Mrs. Dorrance and Jack at Cinnaminson.
Spent night at Radnor.
Dec. 19, spent night at Radnor.
Dec. 20, spent night at Radnor.
Dec. 21, attended Board Meeting Philadelphia-Girard National Bank.
Spent night at Radnor.
Dec. 22, attended Board Meeting Pennsylvania Railroad.
Attended General Atterbury's Dinner at Rittenhouse Club.
Spent night at Bellevue-Stratford Hotel.
Dec. 23, attended Board Meeting Girard Trust Company.
Spent night at Radnor.
Dec. 24, spent night at Radnor.
Dec. 25, spent night at Radnor.
Dec. 26, spent night at Radnor.
Dec. 27, spent night at Radnor.
Dec. 28, attended Board Meeting Philadelphia-Girard National Bank.
Spent night at Radnor.

Dec. 29, attended Board Meeting National Bank of Commerce in New York.
Spent night at Radnor.
Dec. 30, attended Board Meeting Girard Trust Company.
Spent night at Bellevue-Stratford Hotel.
Dec. 31, spent night at Bellevue-Stratford Hotel.

[fol. 272] Jan. 1, spent night at Radnor.
Jan. 2, spent night at Radnor.
Jan. 3, spent night at Radnor.
Jan. 4, attended Board Meeting Philadelphia-Girard Trust Company.
Spent night at Radnor.
Jan. 5, spent night at Radnor.
Jan. 6, attended Board Meeting Girard Trust Company.
Spent night at Radnor.
Jan. 7, Elinor and Fifi sailed on Berengaria.
Spent night at Radnor.
Jan. 8, spent night at Radnor.
Jan. 9, spent night at Radnor.
Jan. 10, spent night at Cinnaminson.
Jan. 11, attended Board Meeting Philadelphia-Girard National Bank.
Spent night at Radnor.
Jan. 12, attended Board Meeting Pennsylvania Railroad.
Spent night at Radnor.
Jan. 13, attended Board Meeting Girard Trust Company.
Spent night at Radnor.
Jan. 14, attended Board Meeting West Jersey & Seashore Railroad Co.
Spent night at Radnor.
Jan. 15, spent night at Radnor.
Jan. 16, spent night at Radnor.
Jan. 17, spent night at Radnor.
Jan. 18, attended Board Meeting Philadelphia-Girard National Bank.
Spent the night at Radnor.
Jan. 19, spent the night at Radnor.
Jan. 20, attended Meeting of Board of Directors of Girard Trust Co.
Spent the night at Radnor.
[fol. 273] Jan. 21, dinner to Mr. Elisha Lee.
Spent the night at Radnor.
Jan. 22, spent the night at Radnor.

Jan. 23, spent the night at Radnor.
Jan. 24, spent the night at Radnor.
Jan. 25, attended Board Meeting Philadelphia-Girard National Bank.
Spent the night at Radnor.
Jan. 26, Stockholders Meeting Campbell Soup Company.
Directors' Meeting P. R. R.
Spent the night at Radnor.
Jan. 27, attended National Canners' Assn. Convention, Atlantic City, N. J.
Directors Meeting Girard Trust Co.
Spent the night at Radnor.
Jan. 28, attended meeting of Directors Campbell Soup Company (Delaware).
Spent the night at Radnor.
Jan. 29, spent the night at Radnor.
Jan. 30, spent the night at Radnor.
Jan. 31, spent the night at Radnor.
Feb. 1, attended Philadelphia-Girard National Bank Board of Directors' Meeting.
Spent the night at Radnor.
Feb. 2, spent the night at Radnor.
Feb. 3, attended meeting of Girard Trust Co. Directors.
Spent the night at Radnor.
Feb. 4, spent the night at Radnor.
Feb. 5, spent the night at Radnor.
Feb. 6, spent the night at Radnor.
Feb. 7, spent the night at Radnor.
Feb. 8, attended Directors' Meeting of Philadelphia-Girard National Bank.
Spent the night at Radnor.
[fol. 274] Feb. 9, attended Road Committee Meeting Penna. R. R. Co.
Attended Directors' Meeting National Bank of Commerce in N. Y.
Spent the night at Radnor.
Feb. 10, attended meeting of Girard Trust Co. Directors.
Spent the night at Cinnaminson.
Feb. 11, spent the night at Radnor.
Feb. 12, spent the night at Radnor.
Feb. 13, spent the night at Radnor.
Feb. 14, spent the night at Radnor.
Feb. 15, went to New York to meet Miss Elinor Dorrance, returning from France.

Spent the night at Radnor.
Feb. 16, spent the night at Radnor.
Attended meeting of Pennsylvania Railroad Directors.
Feb. 17, attended meeting of Girard Trust Co. Directors.
Feb. 18, spent the night at Radnor.
Feb. 19, spent the night at Radnor.
Feb. 20, spent the night at Radnor.
Feb. 21, attended meeting of Philadelphia-Girard National Bank.
Attended meeting of Philadelphia & Camden Ferry Co. Directors.
Spent the night at Radnor.
Feb. 22, holiday.
Spent the night at Radnor.
Feb. 23, attended meeting of Road Committee of Pennsylvania R. R. Co.
Spent the night at Radnor.
Feb. 24, attended meeting of Girard Trust Co. Directors.
Luncheon at Southern Hotel, Baltimore with Pennsylvania R. R. Officials.
Spent the night at Radnor.
[fol. 275] Feb. 25, spent the night at New York, visiting Conways.
Feb. 26, spent the night at Radnor.
Feb. 27, spent the night at Radnor.
Feb. 28, spent the night at Radnor.
Mar. 1, attended Board Meeting Philadelphia-Girard National Bank.
Spent the night at Bellevue-Stratford Hotel.
Bal Masque.
Mar. 2, spent the night at Radnor.
Mar. 3, attended meeting of Directors Girard Trust Co.
Mar. 4, spent the night at Radnor.
Mar. 5, spent the night at Radnor.
Mar. 6, spent the night at Radnor.
Mar. 7, spent the night at Radnor.
Mar. 8, attended meeting of Philadelphia-Girard National Bank Directors.
Spent the night at Radnor.
Mar. 9, attended meeting of Road Committee of P. R. R.
Attended Directors' Meeting of N. B. of C. in N. Y.
Spent the night at Radnor.
Mar. 10, attended meeting of Board of Directors of Girard Trust Co.

Spent the night at Radnor.
Mar. 11, spent the night at Radnor.
Mar. 12, spent the night at Radnor.
Mar. 13, spent the night at Radnor.
Mar. 14, spent the night at Radnor.
Mar. 15, spent the night at Radnor.
Mar. 16, spent the night at Radnor.
Mar. 17, attended meeting of Girard Trust Co.
Spent the night at Radnor.
Mar. 18, spent the night at Radnor.
[fol. 276] Mar. 19, spent the night at Radnor.
Mar. 20, spent the night at Radnor.
Mar. 21, spent the night at Radnor.
Mar. 22, spent the night at Radnor.
Mar. 23, attended Directors' Meeting at Broad Street Station and Road Committee Meeting.
Spent the night at Radnor.
Mar. 24, confined to the house with severe cold.
Spent the night at Radnor.
Mar. 25, confined to the house with cold.
Spent night at Radnor.
Mar. 26, confined to the house with cold.
Spent the night at Radnor.
Mar. 27, spent night at Radnor.
Mar. 28, spent night at Radnor.
Mar. 29, spent the night at Radnor.
Mar. 30, spent the night at Radnor.
Mar. 31, spent the night at Radnor.
Apr. 1, spent the night at Radnor.
Apr. 2, spent the night at Radnor.
Apr. 3, spent the night at Radnor.
Apr. 4, spent the night at Radnor.
Apr. 5, spent the night at Radnor.
Apr. 6, spent the night at Radnor.
Apr. 7, spent the night at Radnor.
Apr. 8, spent the night at "Woodcrest," Radnor.
Apr. 9, spent the night at Radnor.
Apr. 10, spent the night at Radnor.
Apr. 11, spent the night at Radnor.
Apr. 12, spent the night at Radnor.
Apr. 13, spent the night at Radnor.
Apr. 14, spent the night at Radnor.
Apr. 15, spent the night at Radnor.

Apr. 16, spent the night at Radnor.
Apr. 17, spent the night at Radnor.
[fol. 277] Apr. 18, spent the night at Radnor.
Apr. 19, came to the office for two hours. First time since Mar. 23. Spent the night at Radnor.
Apr. 20, spent the night at Radnor.
Apr. 21, spent the night at Radnor, Went to New York.
Apr. 22, spent the night at Radnor. Came to the office for several hours.
Apr. 23, spent the night at Radnor.
Apr. 24, spent the night at Radnor.
Apr. 25, spent the night at Radnor. Spent four hours in the office today.
Apr. 26, came to the office about noon—left at four. Sailed on the Berengaria at 12:10 on 27th. Spent the night on shipboard.
Apr. 27, Dr. D., Mrs. D and Miss Elinor sailed at 12:10 on Berengaria. Spent the night at sea.
Apr. 28, at sea.
Apr. 29, at sea.
Apr. 30, at sea.
May 1, at sea.
May 2, at sea.
May 3, landed Cherbourg. Spent the night at Paris.
May 4, spent the night in Paris.
May 5, spent the night in Paris.
May 6, spent the night in Paris.
May 7, spent the night in Paris.
May 8, spent the night in Paris.
May 9, spent the night in Paris.
May 10, spent the night in Paris.
May 11, spent the night in Paris. Charlotte Dorrance sailed on "Aquitania" to join family in Paris.
[fol. 278] May 12, spent the night in Paris.
May 13, spent the night in Paris.
May 14, spent the night in Paris.
May 15, spent the night in Paris.
May 16, spent the night in Paris.
May 17, spent the night in Paris.
May 18, spent the night in Paris.
May 19, spent the night in Paris.
May 20, spent the night in Paris.

May 21, spent the night in Paris.
May 22, spent the night in Paris.
May 23, spent the night in Paris.
May 24, spent the night in Paris.
May 25, spent the night in Paris.
May 26, spent the night in Paris.
May 27, spent the night in Paris.
May 28, sailed from Cherbourg on S. S. "Berengaria."
May 29, at sea.
May 30, at sea.
May 31, at sea.
June 1, at sea.
June 2, at sea.
June 3, landed at New York on return from Paris. Spent the night at Radnor.
June 4, spent the night at Radnor.
June 5, spent the night at Radnor.
June 6, spent the night at Radnor.
June 7, spent the night at Radnor.
June 8, spent the night at Radnor.
June 9, attended meeting of Girard Trust Co. Directors. Spent the night at Radnor.
June 10, spent the night at Radnor.
June 11, spent the night at Radnor.
June 12, spent the night at Radnor.
[fol. 279] June 13, en route to Canada for fishing.
June 14, en route for fishing in Canada.
June 15, en route for fishing in Canada.
June 16, en route for fishing in Canada.
June 17, spent the night at camp on St. John's River, P. Q.
June 18, spent the night at camp on St. John's River, P. Q.
June 19, spent the night at camp on St. John's River, P. Q.
June 20, at camp St. John's River, P. Q.
June 21, at camp St. John's River, P. Q.
June 22, at camp St. John's River, P. Q.
June 23, at camp St. John's River, P. Q.
June 24, at camp St. John's River, P. Q.
June 25, at camp St. John's River, P. Q.
June 26, at camp, St. John's River, P. Q.
June 27, at camp St. John's River, P. Q.
June 28, at camp on St. John's River, Quebec.
June 29, at camp on St. John's River, Quebec.
June 30, en route from Canada.

July 1, en route from Canada.
July 2, en route from Canada.
July 3, en route from Canada.
July 4, spent the night at Radnor.
July 5, spent the night at Radnor.
July 6, spent the night at Radnor.
July 7, spent the night at Radnor.
July 8, spent the night at Radnor.
July 9, spent the night at Radnor.
July 10, spent the night at Radnor.
July 11, attended Vestry Meeting at Riverton, N. J. Spent the night at Radnor.
July 12, spent the night at Radnor.
July 13, spent the night at Radnor.
[fol. 280] July 14, spent the night at Radnor. Mrs. Dorrance, Mrs. Mallinckrodt, Peggy, Jack and nurse went to Jamestown, R. I. Attended meeting of Girard Trust Co. Directors.
July 15, spent the night at Radnor.
July 16, spent the night at Radnor.
July 17, spent the night at Radnor.
July 18, spent the night at Radnor.
July 19, spent the night at Radnor.
July 20, spent the night at Radnor.
July 21, left for Jamestown, R. I.
July 22, Jamestown, R. I.
July 23, Jamestown, R. I.
July 24, Jamestown, R. I.
July 25, went to meeting at Museum Memorial Hall. Mr. Minot spent night with Dr. Dorrance.
July 26, spent night at Radnor.
July 27, National Bank of Commerce in New York. Spent night at Radnor.
July 28, spent night at Radnor.
July 29, left for Jamestown, R. I. Spent the night at Jamestown.
July 30, Jamestown, R. I.
July 31, spent the night on boat returning from Jamestown. Used Mr. Carle C. Conway's boat "Hurry Up II."
Aug. 1, spent the night at Radnor.
Aug. 2, spent the night at Radnor.
Aug. 3, spent the night at Radnor.
Aug. 4, spent the night at Radnor.

Aug. 5, spent the night at Radnor.
Aug. 6, spent the night at Jamestown.
Aug. 7, spent the night on boat returning from Jamestown.
[fol. 281] Aug. 8, spent the night at Radnor.
Aug. 9, spent the night at Radnor.
Aug. 10, sailed at midnight on the "Berengaria."
Aug. 11, at sea.
Aug. 12, at sea.
Aug. 13, at sea.
Aug. 14, at sea.
Aug. 15, at sea.
Aug. 16, at sea.
Aug. 17, spent the night in Paris.
Aug. 18, spent the night in Paris. Mrs. Mallinckrodt, Peggy and Jack returned from Jamestown to "Woodcrest," Radnor.
Aug. 19, spent the night in Paris.
Aug. 20, sailed on S. S. "Berengaria" with Mrs. Dorrance, Fifi and Charlotte.
Aug. 21, at sea.
Aug. 22, at sea.
Aug. 23, at sea.
Aug. 24, at sea.
Aug. 25, at sea.
Aug. 26, landed in New York. Spent the night at Radnor.
Aug. 27, spent the night at Radnor.
Aug. 28, spent the night at Radnor.
Aug. 29, spent the night at Radnor.
Aug. 30, spent the night at Radnor.
Aug. 31, spent the night at Radnor.
Sept. 1, spent the night at Radnor. Attended meeting of Girard Trust Co.
Sept. 2, spent the night at Radnor.
Sept. 3, spent the night at Radnor.
Sept. 4, spent the night at Radnor.
Sept. 5, spent the night at Radnor.
Sept. 6, spent the night at Radnor.
Sept. 7, spent the night at Radnor.
[fol. 282] Sept. 8, spent the night at Radnor. Attended meeting of Girard Trust Co.
Sept. 9, spent the night at Radnor.
Sept. 10, spent the night at Radnor.

Sept. 11, spent the night at Radnor.
Sept. 12, spent the night at Radnor.
Sept. 13, spent the night at Radnor.
Sept. 14, spent the night at Radnor.
Sept. 15, attended meeting of Girard Trust Co. Directors. Spent the night at Radnor.
Sept. 16, spent the night at Radnor.
Sept. 17, spent the night at Radnor.
Sept. 18, spent the night at Radnor.
Sept. 19, spent the night at Radnor.
Sept. 20, spent the night at Radnor.
Sept. 21, spent the night at Radnor.
Sept. 22, attended Directors' Meeting of Girard Trust Co. Spent the night at Radnor.
Sept. 23, spent the night at Radnor.
Sept. 24, spent the night at Radnor.
Sept. 25, spent the night at Radnor.
Sept. 26, spent the night at Radnor.
Sept. 27, spent the night at Radnor.
Sept. 28, spent the night at Radnor. Attended Directors Meeting of Pennsylvania Railroad.
Sept. 29, attended Directors' Meeting of Girard Trust Company. Spent the night at Radnor.
Sept. 30, spent the night at Radnor.
Oct. 1, Miss Elinor Dorrance was married at noon today to Mr. Nathaniel P. Hill. Spent the night at Radnor.
Oct. 2, spent the night at Radnor.
Oct. 3, spent the night at Radnor.
[fol. 283] Oct. 4, attended Directors' Meeting of Phila.-Girard National Bank. Spent the night at Radnor.
Oct. 5, spent the night at Radnor.
Oct. 6, attended Directors' Meeting of Girard Trust Company. Spent the night at Radnor.
Oct. 7, visited New York with Mr. Annett. Spent the night at Radnor.
Oct. 8, spent the night at Radnor.
Oct. 9, spent the night at Radnor.
Oct. 10, spent the night at Radnor.
Oct. 11, attended meeting of Philadelphia-Girard National Bank Directors. Spent the night at Radnor.
Oct. 12, spent the night at Radnor.
Oct. 13, attended Directors' Meeting of Pennsylvania Railroad and Girard Trust Co. Spent the night at Radnor.

Oct. 14, had dinner at Links Club New York with Messrs. Joseph P. Knapp, Chas. G. Meyer, Mr. Anse Beard and Mr. Slade. Spent the night at N. Y. Yacht Club. Attended meeting of Port Reading R. R.

Oct. 15, spent the night at Radnor.

Oct. 16, spent the night at Radnor.

Oct. 17, attended Vestry Meeting of Christ Church, Riverton.

Oct. 18, spent the night at New York Yacht Club.

Oct. 19, spent the night at Radnor.

Oct. 20, attended Directors' Meeting at Girard Trust Co. Spent the night at Radnor.

Oct. 21, spent the night at Radnor.

Oct. 22, spent the night at Radnor.

Oct. 23, spent the night at Radnor.

[fol. 284] Oct. 24, spent the night at Radnor.

Oct. 25, spent the night at Radnor.

Oct. 26, spent the night at Radnor. Attended Directors' Meeting of Pennsylvania R. R.

Oct. 27, spent the night at Radnor. Attended Directors' Meeting of Girard Trust Co.

Oct. 28, spent the night at Radnor.

Oct. 29, spent the night on road with Pennsylvania Directors.

Oct. 30, spent the night on road with Pennsylvania R. R. Directors.

Oct. 31, spent the night on road with Pennsylvania R. R. Directors.

Nov. 1, spent the night at Havre de Grace, Md.

Nov. 2, spent the night at Radnor.

Nov. 3, spent the night at Havre de Grace, Md.

Nov. 4, spent the night at Radnor.

Nov. 5, spent the night at Radnor.

Nov. 6, spent the night at Radnor.

Nov. 7, spent the night at Radnor.

Nov. 8, voted today at Cinnaminson, N. J. Spent the night at Radnor.

Nov. 9, attended Directors' Meeting Penna. R. R. Co. Spent the night at Radnor.

Nov. 10, attended meeting of Girard Trust Co. Directors. Spent the night at Havre de Grace, Md.

Nov. 11, spent the night at Radnor. Gunning at Havre de Grace.

Nov. 12, spent the night at Radnor.
Nov. 13, spent the night at Radnor.
Nov. 14, attended meeting of Directors of Prudential Insurance Co. of America at Newark, N. J.
[fol. 285] Nov. 14, spent the night at Radnor.
Mr. A. C. Dorrance went to Havre de Grace.
Nov. 15, confined to house with Grippe.
Spent the night at Radnor.
Nov. 16, confined to the house with grippe.
Spent night at Radnor.
Mr. Willits went to Havre de Grace.
Nov. 17, confined to the house.
Spent the night at Radnor.
Nov. 18, confined to house with grippe.
Spent the night at Radnor.
Mr. Willits went to Havre de Grace.
Nov. 19, confined to the house with Grippe.
Spent the night at Radnor.
Nov. 20, spent the night at Radnor.
Nov. 21, spent the night at Radnor.
Mr. Willits went to Havre de Grace.
Nov. 22, spent the night at Radnor.
Nov. 23, spent the night at Radnor.
Mr. R. B. Nieukirk & Mr. Willits went to Havre de Grace.
Nov. 24, spent the night at Radnor.
Nov. 25, spent the night at Radnor.
Mr. A. C. Dorrance went to Havre de Grace.
Nov. 26, spent the night at Radnor.
Nov. 27, spent the night at Radnor.
Nov. 28, spent the night at Radnor.
Mr. Willits went to Havre de Grace.
Nov. 29, spent the night at Radnor.
Nov, 30, Mr. Willits went to Havre de Grace.
Confined to house on account of illness.
Spent night at Radnor.
Dec. 1, confined to house on account of illness.
Spent night at Radnor.
Dec. 2, spent night at Radnor.
Dec. 3, spent night at Radnor.
Dec. 4, spent night at Radnor.
[fol. 286] Dec. 5, spent night at Radnor.
Dec. 6, spent night at Radnor.

Dec. 7, spent night at Radnor.
Dec. 8, spent night at Radnor.
Dec. 9, spent night at Radnor.
Dec. 10, spent night at Radnor.
Dec. 11,
Dec. 12, spent night at Radnor.
Dec. 13, spent night at Radnor.
Dec. 14, spent night at Radnor.
Dec. 15, spent night at Radnor.
Dec. 16, spent night at Radnor.
Dec. 17, spent night at Radnor.
Dec. 18, spent night at Radnor.
Dec. 19, spent night at Radnor.
Dec. 20, spent night at Radnor.
Dec. 21, spent night at Radnor.
Dec. 22, spent night at Radnor.
Dec. 23, spent night at Radnor.
Dec. 24, spent night at Radnor.
Dec. 25,
Dec. 26, spent the night at Radnor.
Dec. 27, spent the night at Radnor.
Dec. 28, spent the night at Radnor.
Dec. 29, spent the night at Radnor.
Dec. 30, spent the night at Radnor.
Dec. 31, spent the night at Bellevue-Stratford Hotel, Phila.

[fol. 287] 1928

Jan. 1, spent the night at Radnor.
Jan. 2, spent the night at Radnor.
Jan. 3, spent the night at Radnor.
Jan. 4, spent the night at Radnor.
Jan. 5, en route to Florida with Mr. Clements & Mr. LeBoutillier.
Jan. 6, en route to Florida.
Jan. 7, spent the night at Cocolado Club, Miami Beach, Florida.
Jan. 8, on board "Shadow K" in Florida waters.
Jan. 9, on board "Shadow K" in Florida waters.
Jan. 10, on board "Shadow K" in Florida waters.
Jan. 11, spent the night on Shadow K. in Florida waters.
Jan. 12, spent the night on board Shadow K in Florida waters.

Jan. 13, on board "Shadow K" in Florida waters.
Jan. 14, on board "Shadow K" in Florida waters.
Jan. 15, on board "Shadow K" in Florida waters.
Jan. 16, spent the night at Palm Beach, Florida.
Jan. 17, spent the night on the train in Florida.
Jan. 18, spent the night on the train.
Jan. 19, on way from Palm Beach to Daytona.
Jan. 20, en route to Phila. Stopped at St. Augustine, Florida.
Jan. 21, enroute for Phila. from Florida.
Jan. 22, reached Phila. at 8:09 A. M. Spent the night at Radnor.
Jan. 23, spent the night at Radnor.
Jan. 24, spent the night at Radnor.
Jan. 25, spent the night at Radnor.
Jan. 26, attended meeting of Girard Trust Co. Spent the night at Radnor.
Jan. 27, spent the night at Radnor.
Jan. 28, spent the night at Radnor.
[fol. 288] Jan. 29, spent the night at Radnor.
Jan. 30, spent the night at Radnor.
Jan. 31, spent the night at Woodcrest, Radnor, Pa.
Feb. 1, spent the night at Radnor.
Feb. 2, spent the night at Radnor.
Feb. 3, spent the night at Radnor.
Feb. 4, spent the night at Radnor.
Feb. 5, spent the night at Radnor.
Feb. 6, spent the night at Radnor.
Feb. 7, Spent the night at Radnor. Attended meeting of Phila. Girard Directors.
Feb. 8, attended meeting of Penna. R. R. Co. Directors. Spent the night at Radnor.
Feb. 9, attended meeting of Girard Trust Co. Directors. Spent the night on the train en route to Long Key, Florida.
Feb. 10, en route to Florida.
Feb. 11, arrived at Long Key, Florida.
Feb. 12, spent the night at Long Key, Florida.
Feb. 13, spent the night at Long Key, Florida.
Feb. 14, spent the night at Long Key, Florida.
Feb. 15, spent the night at Long Key, Florida.
Feb. 16, spent the night at Long Key, Florida.
Feb. 17, spent the night at Long Key, Florida.
Feb. 18, spent the night at Long Key, Florida.

Feb. 19, spent the night at Long Key, Florida.
Feb. 20, spent the night at Long Key, Florida.
Feb. 21, spent the night at Long Key, Florida.
Feb. 22, spent the night at Long Key, Florida.
Feb. 23, spent the night at Long Key, Florida.
Feb. 24, spent the night at Long Key, Florida.
Feb. 25, spent the night at Long Key, Florida.
[fol. 289] Feb. 26, spent the night at Long Key, Florida.
Feb. 27, spent the night at Long Key, Florida.
Feb. 28, spent the night at Long Key, Florida.
Feb. 29, left Long Key this evening. Spent the night on train en route.
Mar. 1, en route from Florida.
Mar. 2, spent the night at Radnor. Attended Special Meeting at Phila. Girard National Bank.
Mar. 3, spent the night at Radnor.
Mar. 4, spent the night at Radnor.
Mar. 5, spent the night at Radnor.
Mar. 6, spent the night at Radnor.
Mar. 7, spent the night at Radnor.
Mar. 8, spent the night at Radnor.
Mar. 9, spent the night at Radnor.
Mar. 10, spent the night at Radnor. Did not attend any meetings this week or visit the office.
Mar. 11, spent the night at Radnor.
Mar. 12, attended meeting of Directors of Prudential Insurance Co. of America. Spent the night at Radnor.
Mar. 13, spent the night at Radnor. Attended meeting of Philadelphia-Girard National Bank Directors.
Mar. 14, attended meetings of Pennsylvania Railroad Directors and National Bank of Commerce in N. Y. Directors. Spent the night at Radnor.
Mar. 15, attended meeting of Girard Trust Co. Spent the night at Radnor.
Mar. 16, Spent the night at Radnor.
Mar. 17, spent the night at Radnor.
Mar. 18, spent the night at Radnor.
Mar. 19, spent the night at Radnor.
[fol. 290] Mar. 20, attended meeting of B of D of Philadelphia Girard National Bank. Spent the night at Radnor.
Mar. 21, spent the night at Radnor.
Mar. 22, attended meeting of Girard Trust Co. Board. Spent the night at Radnor.

Mar. 23, attended Special Meeting of Penna. R. R. Directors. Spent the night at Radnor.

Mar. 24, visited Cinnaminson. Spent the night at Radnor.

Mar. 25, spent the night at Radnor.

Mar. 26, spent the night at Radnor.

Mar. 27, attended meeting of Phila.-Girard National Bank Directors. Spent the night at Radnor.

Mar. 28. spent the night at Radnor. Attended Directors' Meeting of Penna. Railroad Co.

Mar. 29, attended Directors' Meeting of Girard Trust Co. Spent the night at Radnor.

Mar. 30, attended Directors' Meeting Phila. & Camden Ferry Co. Spent the night at Woodcrest.

Mar. 31, spent the night at Radnor.

Apr. 1, spent the night at Radnor.

Apr. 2, spent the night at Radnor.

Apr. 3, attended meeting of Phila.-Girard National Bank. Spent the night at Radnor.

Apr. 4, spent the night at Radnor.

Apr. 5, spent the night at Radnor.

Apr. 6, spent the night at Radnor.

Apr. 7, spent the night at Radnor.

Apr. 8, spent the night at Radnor.

[fol. 291] Apr. 9, attended meeting of Prudential Insurance Co. Directors. Spent the night at Radnor.

Apr. 10, spent the night at Radnor.

Apr. 11, attended Directors Meeting of P. R. R. Co. Spent the night at Radnor.

Apr. 12, attended Meeting of Girard Trust Co. Directors. Spent the night at Radnor.

Apr. 13, attended Directors' Meetings of West Jersey & Seashore R. R. Co. & Phila. & Camden Ferry Co. Spent the night at Radnor.

Apr. 14, spent the night at Radnor.

Apr. 15, spent day & night at Radnor.

Apr. 16, en route to Pittsburgh.

Apr. 17, spent the night en route from Pittsburgh to Phila.

Apr. 18, spent the night at Radnor.

Apr. 19, spent the night at New York. Attended Banquet of Prudential Insurance Co. at Hotel Commodore, N. Y.

Apr. 20, spent the night at Radnor.
Apr. 21, spent the night at Radnor.
Apr. 22, spent the night at Radnor.
Apr. 23, attended Directors' Meeting of Phila. National Bank. Spent night at Radnor.
Apr. 24, attended Directors' Meeting of Girard Trust Co. Spent night at Radnor.
Apr. 25, attended Directors' Meeting of P R R. and National Bank of Com. in N. Y. Spent the night at Radnor.
Apr. 26, spent the night at Radnor.
[fol. 292] Apr. 26, attended Directors' Meeting Girard Trust Co.
Apr. 27, spent the night at Radnor.
Apr. 28, spent the night at Radnor.
Apr. 29, spent the night at Radnor.
Apr. 30, spent the night at Radnor. Attended Directors Meeting of Philadelphia National Bank.
May 1, spent the night at Radnor.
May 2, spent the night at Radnor.
May 3, went to Chicago on "Broadway," spent the night on train.
May 4, spent the day in Chicago.
May 5, returned to Philadelphia from Chicago.
May 6, spent the night at Radnor.
May 7, spent the night at Radnor.
May 8, spent the night at Radnor.
May 9, spent the night at Radnor.
May 10, spent the night at Radnor.
May 11, spent the night at Radnor.
May 12, spent the night at Radnor.
May 13, spent the night at Radnor.
May 14, spent the night at Radnor.
May 15, voted at Primary Election at Cinnaminson, N. J. Sailed on Berengaria for France.
May 16, at sea.
May 17, at sea.
May 18, at sea.
May 19, at sea.
May 20, ——
May 21, landed at Cherbourg. Spent the night in Paris.
May 22, at Ritz Hotel, Paris.
May 23, at Ritz Hotel, Paris.
May 24, at Ritz Hotel, Paris.
May 25, Ritz Hotel, Paris.

[fol. 293] May 26, Ritz Hotel, Paris.
May 27, Ritz Hotel, Paris.
May 28, Ritz Hotel, Paris.
May 29, En route to Bad-Nauheim, Germany.
May 30, at Hotel Kaiserhof Bad-Nauheim, Germany.
May 31, at Hotel Kaiserhof, Bad-Nauheim, Germany.
June 1, at Hotel Kaiserhof, Bad-Nauheim, Germany.
June 2, at Hotel Kaiserhof, Bad-Nauheim, Germany.
June 3, Bad-Nauheim, Germany.
June 4, Bad-Nauheim, Germany.
June 5, Bad-Nauheim, Germany.
Mrs. Dorrance, Miss Fifi & Miss Charlotte arrived at Nauheim.
June 6, Bad-Nauheim, Germany.
Mrs. Alice Dorrance Hood died at Cinnaminson today.
June 7, Bad-Nauheim, Germany.
June 8, Bad-Nauheim, Germany.
June 9, Bad-Nauheim, Germany.
June 10, Bad-Nauheim, Germany.
June 11, Bad-Nauheim, Germany.
June 12, Bad-Nauheim, Germany.
June 13, Bad-Nauheim, Germany.
June 14, Bad-Nauheim, Germany.
June 15, Bad-Nauheim, Germany.
June 16, Bad-Nauheim, Germany.
Mrs. Dorrance, Misses Fifi & Charlotte sailed for France on Berengaria.
June 17, Bad-Nauheim, Germany.
June 18, Bad-Nauheim, Germany.
June 19, Bad-Nauheim, Germany.
June 20, Bad-Nauheim, Germany.
June 21, Bad-Nauheim, Germany.
[fol. 294] June 22, Bad-Nauheim, Germany.
Mrs. Dorrance, Misses Fifi & Charlotte, arrived at New York on the Berengaria.
June 23, Bad-Nauheim, Germany.
June 24, Bad-Nauheim, Germany.
June 25, Bad-Nauheim, Germany.
June 26, Bad-Nauheim, Germany.
June 27, Bad-Nauheim, Germany.
"Woodcrest," Radnor, closed today. Family and servants moved to "Mizzentop," Bar Harbor, Maine.
June 28, en route from Nauheim to Paris.

June 29, arrived at Paris from Nauheim.
June 30, sailed on Aquitania for New York.
July 1, at sea.
July 2, at sea.
July 3, at sea.
July 4, at sea.
July 5, at sea.
July 6, at sea.
July 7, arrived New York and went direct to Bar Harbor, Maine.
July 8, at Bar Harbor.
July 9, at Bar Harbor.
July 10, at Bar Harbor.
July 11, at Bar Harbor.
July 12, at Bar Harbor.
July 13, at Bar Harbor.
July 14, at Bar Harbor.
July 15, Returned to Camden, N. J.
July 16, Spent the night at Cinnaminson, N. J.
July 17, spent the night at Cinnaminson.
July 18, spent the night at Cinnaminson.
July 19, spent the night at Cinnaminson.
Mrs. N. P. Hill came from N. Y. to visit her father at Cinnaminson.
[fol. 295] July 20, spent the night at Cinnaminson.
July 21, spent the night at Cinnaminson.
July 22, Mrs. Hill returned to her home in N. Y. Dr. Dorrance spent the day and night at Cinnaminson.
July 23, spent the night at Cinnaminson, N. J.
July 24, spent the night at Cinnaminson, N. J.
July 25, spent the night on the train en route to Bar Harbor.
Attended Directors' Meeting of National Bank of Commerce in New York.
July 26, spent the night at Bar Harbor.
July 27, spent the night at Bar Harbor.
July 28, spent the night at Bar Harbor.
July 29, spent the night at Bar Harbor.
July 30, Bar Harbor, Maine.
July 31, Bar Harbor, Maine.
Aug. 1, Bar Harbor, Maine.
Aug. 2, Bar Harbor, Maine.
Aug. 3, Bar Harbor, Maine.

Aug. 4, Bar Harbor, Maine.
Aug. 5, Bar Harbor, Maine.
Aug. 6, spending time at Bar Harbor, Maine.
Aug. 7, vacation at Bar Harbor, Maine.
Aug. 8, staying at Bar Harbor, Maine.
Aug. 9, staying at Bar Harbor, Maine.
Aug. 10, spent the night at Bar Harbor.
Aug. 11, spent the night at Bar Harbor.
Aug. 12, spent the night at Bar Harbor.
Aug. 13, spent the night at Bar Harbor.
Aug. 14, spent the night at Bar Harbor.
Aug. 15, spent the night at Bar Harbor.
Aug. 16, spent the night en route from Bar Harbor to Camden.
Aug. 17, arrived at Camden from Bar Harbor.
Spent the night at Cinnaminson.
Aug. 18, spent the night at Cinnaminson.
[fol. 296] Aug. 19, Spent the day and night at Cinnaminson.
Aug. 20, spent the night at Cinnaminson.
Aug. 21, spent the night at Cinnaminson.
Aug. 22, spent the night at Cinnaminson.
Aug. 23, spent the night at Cinnaminson.
Aug. 24, spent the night at Cinnaminson.
Aug. 25, en route to Bar Harbor.
Aug. 26, spent night at Bar Harbor, Maine.
Aug. 27, staying at Bar Harbor.
Aug. 28, staying at Bar Harbor.
Aug. 29, visiting family at Bar Harbor.
Aug. 30, Bar Harbor, Maine.
Aug. 31, spent the night at Bar Harbor.
Sept. 1, Bar Harbor, Maine.
Sept. 2, staying with family at Bar Harbor.
Sept. 3, staying at Bar Harbor.
Sept. 4, staying at Bar Harbor.
Sept. 5, en route to Phila.
Sept. 6, spent the night at Cinnaminson.
Sept. 7, Attended executive committee meeting of Philadelphia National Bank. Spent the night at Cinnaminson.
Sept. 8, spent the night at Cinnaminson.
Sept. 9, spent the night at Cinnaminson.
Sept. 10, spent the night at Cinnaminson.
Sept. 11, spent the night at Cinnaminson.

Sept. 12, spent the night at Cinnaminson.
Sept. 13, attended meeting of Girard Trust Co. Directors. Spent the night at Cinnaminson.
Mrs. Dorrance returned to Cinnaminson today.
Sept. 14, attended Executive Com. meeting of Phila. Nat'l Bank.
Spent the night at Cinnaminson.
Sept. 15, spent the night at Cinnaminson.
Sept. 16, spent the night at Cinnaminson.
[fol. 297] Sept. 17, Spent the night at Cinnaminson.
Sept. 18, Spent the night at Cinnaminson, gunning at Bridgeton, Sora Gun Club, in afternoon.
Sept. 19, Gunning at Sora Gun Club, Bridgeton, N. J. Spent the night at Cinnaminson.
Sept. 20, Gunning at Sora Gun Club, Bridgeton, N. J. Spent the night at Woodcrest, Radnor.
Sept. 21, Attended Executive Com. Meeting of Phila. National Bank. Spent the night at Radnor.
Sept. 22, Spent the night at Radnor.
Sept. 23, Spent the day & night at Radnor.
Sept. 24, Spent the night at Radnor.
Sept. 25, Spent the night at Radnor.
Sept. 26, Spent the night at Radnor.
Sept. 27, Spent the night at Radnor.
Sept. 28, Attended Executive Com. Meeting Phila. Natl. Bank. Spent the night at Radnor.
Sept. 29, Spent the day & night at Radnor.
Sept. 30, Spent the night at Radnor.
Oct. 1, Spent the night at Radnor.
Oct. 2, Spent the day in New York. Returned to Radnor for the night.
Oct. 3, Miss Charlotte K Dorrance sailed for Europe at midnight. Spent the night at Radnor.
Oct. 4, Spent the night at Radnor.
Oct. 5, Spent the night at Radnor.
Oct. 6, Spent the night at Radnor.
Oct. 7, Spent the night at Radnor.
Oct. 8, Spent the night at Radnor.
Oct. 9, Spent the night at Radnor.
Oct. 10, Attended meeting of P. R. R. Board.
[fol. 298] Oct. 10, Attended meeting of N B of C. in N, Y. Board. Spent the night with Mr. Faris R. Russell at his home.

Oct. 11, Returned to Camden at noon. Spent the night at Radnor.
Oct. 12, Spent the night at Radnor.
Oct. 13, Spent the night at Radnor.
Oct. 14, Spent the night at Radnor.
Oct. 15, Spent the night at Radnor.
Oct. 16, Spent the night at Radnor.
Oct. 17, Spent the night at Radnor.
Oct. 18, Spent the night at Radnor.
Oct. 19, Spent the night at Radnor.
Oct. 20, Spent the night at Radnor.
Oct. 21, Spent the night at Radnor.
Oct. 22, Spent the day in New York—Lunch with Mr. Russell. Spent the night at Radnor.
Oct. 23, Spent the night at Radnor.
Oct. 24, Spent the night at Radnor. Attended Meetings of P. R. R. Road Com. & Directors.
Oct. 25, Attended Directors' Meeting of Girard Trust Co. Spent the night at Radnor.
Oct. 26, Spent the night at Radnor.
Oct. 27, Spent the day & night at Radnor.
Oct. 28, Spent day & night at Radnor.
Oct. 29, Spent the night at Radnor.
Oct. 30, Mr. Clarence Geist took lunch at factory today. Spent the night at Radnor.
Oct. 31, Attended meeting of National Bank of Commerce in N. Y. Spent the night at Radnor.
Nov. 1, Attended Directors' Meeting of Girard Trust Co.
[fol. 299] Nov. 2, spent the night at Radnor.
Nov. 3, spent the day & night at Radnor.
Nov. 4, spent the day & night at Radnor.
Nov. 5, spent the night at Cinnaminson, N. J., with Mrs. Dorrance.
Nov. 6, Dr. & Mrs. J. T. Dorrance voted at Cinnaminson this morning before coming to the office.
Spent the night at Radnor.
Nov. 7, spent the night at Radnor.
Nov. 8, attended meeting of Girard Trust Co. Directors.
Spent the night at Radnor
Nov. 9, spent the night at Radnor.
Mr. A. A. Morse spent the night at Radnor.
Nov. 10, spent the day & night at Radnor.

Nov. 11, spent the night at Radnor.
Nov. 12, spent the night at Radnor.
Nov. 13, spent the night at Radnor.
Nov. 14, spent the night at "Woodcrest" Radnor.
Nov 15, Mrs. Mallinckrodt died at 1:35 this morning.
Spent the night at "Woodcrest" Radnor.
Nov. 16, spent the night at Radnor.
Nov. 17, Mrs. Mallinckrodt was buried at Baltimore today.
Spent the night at Radnor.
Nov. 18, spent the night at Radnor.
Nov. 19, attended Directors' Meeting Phila. National Bank.
Spent the night at Radnor.
Nov. 20, had lunch in N. Y. with Mr. Russell.
Spent the night at Radnor.
[fol. 300] Nov. 21, spent the night at Radnor.
Nov. 22, attended Directors' meeting at Girard Trust Co.
Mr. A. A. Morse spent the night at Radnor.
Nov. 23, spent the night at Radnor.
Nov. 24, spent the day & night at Radnor.
Nov. 25, spent the night at Radnor.
Nov. 26, spent the night at Radnor.
Nov. 27, spent the night at Radnor.
Nov. 28, attended Directors' Meetings of Girard Trust Co. Pennsylvania Railroad N. B. of C. in N. Y.
Spent the night at Radnor.
Nov. 29, Thanksgiving Day. Spent at Radnor.
Nov. 30, spent the night at Radnor.
Dec. 1, spent night at Radnor. Visited mother at Cinnaminson.
Dec. 2, spent the night at Radnor.
Dec. 3, spent the night at Radnor.
Dec. 4, spent the day in New York.
Spent the night at Radnor.
Dec. 5, spent the night at Radnor.
Dec. 6, spent the night at Radnor.
Dec. 7, spent the night at Radnor.
Dec. 8, spent the day and night at Radnor.
Dec. 9, spent the day and night at Radnor.
Dec. 10, spent the night at Radnor.
Dec. 11, spent the night at Radnor.
Dec. 12, spent the night at Radnor.

Attended Directors' Meeting of P. R. R.

Dec. 13, lunch with Mr. Eysmans & Mr. Shumaker at Broad St. Station.

Dec. 14, spent the night at Radnor.

Dec. 15, spent the day and night at Radnor.

Dec. 16 spent the night at Radnor.

Dec. 17, spent the night at Radnor.

[fol. 301] Dec. 18, spent the night at Radnor.

Dec. 19, Mr. County and Dr. G. M. D. had lunch at the factory. Spent the night at Radnor.

Dec. 20, attended Directors' Meeting Girard Trust Co. Night at Radnor.

Dec. 21, spent the night at Radnor.

Dec. 22, spent the night at Radnor.

Dec. 23, spent the night at Radnor. Dr. & Mrs. Dorrance attended services at Christ Church, Riverton.

Dec. 24, factory & offices closed today.

Dec. 25, spent the day and night at Radnor.

Dec. 26, spent the night at Radnor.

Dec. 27, spent the night at Woodcrest, Radnor.

Dec. 28, spent the night at Radnor.

Dec. 29, spent the day & night at Radnor.

Dec. 30, spent the night at Radnor.

Dec. 31, spent the day & night at Radnor.

[fol. 302] 1929

Jan. 1, spent the day & night at Radnor.

Jan. 2, spent the day and night at Radnor.

Jan. 3, spent the day and night at Radnor.

Jan. 4, spent the day and night at Radnor. Called to see Mother at Cinnaminson in the afternoon.

Jan. 5, spent the day & night at Radnor.

Jan. 6, spent the day & night at Radnor.

Jan. 7, resting at Radnor. Had Mr. Jones out for an advertising conference. Spent the night at Radnor.

Jan. 8, resting at Radnor.

Jan. 9, spent the day & night at Radnor. Mrs. John Dorrance died at midnight.

Jan. 10, spent the day & night at Radnor.

Jan. 11, visited Cinnaminson this afternoon. Spent the night at Radnor.

Jan. 12, Mrs. John Dorrance was buried at Bristol today. Spent the night at Radnor.

Jan. 13, spent the night at Woodcrest, Radnor.
Jan. 14, spent the night at Radnor.
Jan. 15, spent the night at Radnor. Went to the office for a few hours.
Jan. 16, spent the day in the office. Spent the night at Radnor.
Jan. 17, spent the night at Radnor.
Jan. 18, spent the day in the office & night at Radnor.
Jan. 19, spent the night and day at Radnor.
Jan. 20, spent the night at Radnor.
Jan. 21, spent the day in the office and night at Radnor.
Jan. 22, spent the night at Radnor.
[fol. 303] Jan. 23, Stockholders' Yearly Meeting Campbell Soup Co. Spent the night at Radnor,
Jan. 24, attended Meeting of Girard Trust Co. Directors. Spent the night at Radnor.
Jan. 25, attended Meeting of Philadelphia Executive Com. Spent the night at Radnor.
Jan. 26, spent the day & night at Radnor.
Jan. 27, spent the night at Radnor. Taken sick with "flu".
Jan. 28, spent the day & night at Radnor.
Jan. 29, spent the day & night at Radnor.
Jan. 30, confined to the house at Radnor on account of illness.
Jan. 31, confined to the house at Radnor on account of illness.
Feb. 1, confined to the house at Radnor on account of illness.
Feb. 2, confined to the house at Radnor on account of illness.
Feb. 3, confined to the house at Radnor on account of illness.
Feb. 4, confined to the house at Radnor on account of illness.
Feb. 5, confined to the house at Radnor on account of illness.
Feb. 6, confined to the house at Radnor on account of illness.
Feb. 7, confined to the house at Radnor.
Feb. 8, confined to the house at Radnor.
Feb. 9, confined to the house at Radnor.
Feb. 10, confined to the house at Radnor.

Feb. 11, confined to the house at Radnor.
Feb. 12, confined to the house at Radnor.
Feb. 13, confined to the house at Radnor.
[fol. 304] Feb. 14, confined to the house at Radnor.
Feb. 15, confined to the house at Radnor.
Feb. 16, confined to the house at Radnor.
Feb. 17, confined to the house at Radnor.
Feb. 18, confined to the house at Radnor.
Feb. 19, confined to the house at Radnor.
Feb. 20, confined to the house at Radnor.
Feb. 21, confined to the house at Radnor.
Feb. 22, confined to the house at Radnor.
Feb. 23, confined to the house at Radnor.
Feb. 24, confined to the house at Radnor.
Feb. 25, confined to the house at Radnor.
Feb. 26, confined to the house at Radnor.
Feb. 27, confined to the house at Radnor on account of illness.
Feb. 28, confined to the house at Radnor.
Mar. 1, confined to the house at Radnor.
Mar. 2, confined to the house at Radnor.
Mar. 3, confined to the house at Radnor.
Mar. 4, confined to the house at Radnor.
Mar. 5, confined to the house at Radnor.
Mar. 6, confined to the house at Radnor.
Mar. 7, confined to the house at Radnor.
Mar. 8, confined to the house at Radnor.
Mar. 9, confined to the house at Radnor.
Mar. 10, confined to the house at Radnor.
Mar. 11, confined to the house at Radnor.
Mar. 12, confined to the house at Radnor.
Mar. 13, confined to the house at Radnor.
Mar. 14, confined to the house at Radnor.
Mar. 15, Confined to the house at Radnor.
Mar. 16, confined to the house at Radnor.
Mar. 17, confined to the house at Radnor.
Mar. 18, confined to the house at Radnor.
Mar. 19, confined to the house at Radnor.
Mar. 20, confined to the house at Radnor.
Mar. 21, confined to the house at Radnor.
[fol. 305] Mar. 22, confined to the house at Radnor.
Mar. 23, confined to the house at Radnor.
Mar. 24, confined to the house at Radnor.

Mar. 25, spent the day & night at Cinnaminson.
Mar. 26, came to the office today. Spent the night at Radnor.
Mar. 27, spent the night at Radnor.
Mar. 28, came to the office today. Spent the night at Radnor.
Mar. 29, sailed for France on the "Berengaria" at midnight.
Mar. 30, at sea.
Mar. 31, at sea.
Apr. 1, at sea.
Apr. 2, at sea.
Apr. 3, at sea.
Apr. 4, landed at Cherbourg.
Apr. 5, spent the day & night in Paris.
Apr. 6, en route to Nauheim, Germany.
Apr. 7, at Nauheim.
Apr. 8, at Nauheim.
Apr. 9, at Nauheim.
Apr. 10, at Nauheim.
Apr. 11, at Nauheim.
Apr. 12, at Nauheim.
Apr. 13, at Nauheim.
Apr. 14, at Nauheim.
Apr. 15, at Nauheim.
Apr. 16, at Nauheim.
Apr. 17, at Nauheim.
Apr. 18, at Nauheim.
Apr. 19, at Nauheim.
Apr. 20, at Nauheim.
Apr. 21, at Nauheim.
Apr. 22, at Nauheim.
Apr. 23, at Nauheim.
Apr. 24, at Nauheim.
[fol. 306] Apr. 25, at Nauheim.
Apr. 26, at Nauheim.
Apr. 27, at Nauheim.
Apr. 28, at Nauheim.
Apr. 29, at Nauheim.
Apr. 30, at Nauheim.
May 1, at Nauheim.
May 2, at Nauheim.
May 3, at Cernobbio, Italy Villa d'Este Hotel.

May 4, at Cernobbio, Italy.
May 5, at Cernobbio, Italy.
May 6, at Cernobbio, Italy.
May 7, at Cernobbio, Italy.
May 8, at Cernobbio, Italy.
May 9, at Cernobbio, Italy.
May 10, at Cernobbio, Italy.
May 11, at Cernobbio, Italy.
May 12, at Cernobbio, Italy.
May 13, at Lucerne, Switzerland.
May 14, spent the night at Lucerne, Switzerland.
May 15, at Lucerne.
May 16, at Lucerne.
May 17, at Montreux.
May 18, at Montreux.
May 19, at Montreux.
May 20, at Montreux.
May 21, at Montreux Palace Hotel, Montreux, Suisse.
May 22, Ritz Hotel, Paris.
May 23, Ritz Hotel, Paris.
May 24, spent the night in Paris.
May 25, left Cherbourg on S. S. Berengaria.
May 26, at sea.
May 27, at sea.
May 28, at sea.
May 29, at sea.
May 30, at sea.

[fol. 307] May 31, arrived at New York on the "Berengaria." Spent the night at Radnor.

June 1, spent the day and night at Woodcrest Radnor.

June 2, spent the day and night at Radnor.

June 3, arrived back at the office today. Spent the night at Radnor.

June 4, spent the night at Radnor.

June 5, spent most of the day at the office. Spent the night at Radnor.

June 6, attended Directors Meeting Girard Trust Co. Spent the night at Radnor.

June 7, attended Meeting of Phila. National Bank Executive Committee. Spent the night at Radnor.

June 8, spent the day and night at Radnor.

June 9, spent the day and night at Radnor.

June 10, lunch with Mr. Hartford in New York. At-

tended meeting of Prudential Insurance Company Directors at Newark, N. J. Spent the night at Radnor.

June 11, spent the day in the office. Spent the night at Radnor.

June 12, attended Meetings of P. R. R. Spent the night at Radnor.

June 13, attended Directors' Meeting of Girard Trust Co. Spent the night at Radnor.

June 14, spent the day at the office. Spent the night at Radnor.

June 15, spent the day & night at Radnor.

June 16, spent the day & night at Radnor.

June 17, spent the night at Cinnaminson. Attended Directors' Meeting of Phila. Natl. Bank.

[fol. 308] June 18, Voted at Cinnaminson with Mrs. Dorrance. Spent the night at Radnor.

June 19, attended Guaranty Trust Co. Directors. Spent the night at Radnor.

June 20, attended Directors meeting of Girard Trust Co. Spent the night at Radnor.

June 21, attended Exec. Com. Meeting Phila. Natl. Bank. Spent the night at Woodcrest.

June 22, spent the night at Woodcrest.

June 23, spent the night at Woodcrest.

June 24, spent the night at Cinnaminson. Attended Directors Meeting Phila. Natl. Bank.

June 25, spent the night at Cinnaminson.

June 26, attended Directors' Meeting P. R. R. Spent the night at Cinnaminson.

June 27, attended Directors' Meeting Girard Trust Co. Spent the night at Cinnaminson, N. J.

June 28, attended Meeting of Executive Com. of Philadelphia National Bank. Spent the night en route to Bar Harbor, Maine.

June 29, spent the night at "Islecote", Bar Harbor, Maine.

June 30, Bar Harbor, Maine.

July 1, Bar Harbor.

July 2, Bar Harbor.

July 3, Bar Harbor.

July 4, Bar Harbor.

July 5, Bar Harbor.

July 6, Bar Harbor.

July 7, at Bar Harbor.

July 8, at Bar Harbor.
[fol. 309] July 9, at Bar Harbor.
July 10, at Bar Harbor.
July 11, at Bar Harbor.
July 12, at Bar Harbor.
July 13, at Bar Harbor.
July 14, at Bar Harbor.
July 15, spent the day, after arrival from Bar Harbor, in the office. Spent the night at Cinnaminson.
July 16, spent the night at Cinnaminson.
July 17, spent the night at Cinnaminson. Attended directors Meeting of Guaranty Trust Co. of N. Y.
July 18, attended Meeting of Girard Trust Co. Spent the night at Cinnaminson.
July 19, spent the day in the office after attending the meeting of Phila. National Bank Directors. Spent the night en route to Bar Harbor.
July 20, arrived at Bar Harbor.
July 21, at Bar Harbor.
July 22, at Bar Harbor.
July 23, at Bar Harbor.
July 24, at Bar Harbor.
July 25, at Bar Harbor.
July 26, at Bar Harbor.
July 27, at Bar Harbor.
July 28, at Bar Harbor.
July 29, at Bar Harbor.
July 30, at Bar Harbor.
July 31, at Bar Harbor.
Aug. 1, at Bar Harbor.
Aug. 2, at Bar Harbor.
Aug. 3, at Bar Harbor.
Aug. 4, at Bar Harbor. Spent the night en route to Philadelphia.
Aug. 5, spent the night at Cinnaminson.
[fol. 310] Aug. 6, spent the night at Cinnaminson.
Aug. 7, attended Directors' Meeting of Guaranty Trust Co. Had lunch with Mr. Mitchell of National City Bank. Spent the night at Cinnaminson.
Aug. 8, attended Directors' Meeting of Girard Trust Co. Spent the night at Cinnaminson.
Aug. 9, spent the day in the office. Spent the night at Cinnaminson.
Aug. 10, returned to Bar Harbor this afternoon.

Aug. 11, spent the day and night at Bar Harbor.
Aug. 12, at Bar Harbor.
Aug. 13, at Bar Harbor.
Aug. 14, at Bar Harbor.
Aug. 15, at Bar Harbor.
Aug. 16, at Bar Harbor.
Aug. 17, spent the night at Bar Harbor.
Aug. 18, at Bar Harbor.
Aug. 19, spent the night at Bar Harbor.
Aug. 20, en route from Bar Harbor to New York. Spent the night on the train.
Aug. 21, attended Directors' Meeting Guaranty Trust Co. Spent the night at Cinnaminson.
Aug. 22, attended Directors Meetings of Girard Trust Co. & Campbell Soup Company. Spent the night at Cinnaminson.
Aug. 23, spent the day in the office and the night at Cinnaminson.
Aug. 24, spent the day & night at Cinnaminson.
Aug. 25, spent the day & night at Cinnaminson.
Aug. 26, spent the day & night at Cinnaminson.
Aug. 27, spent the day & night at Cinnaminson.
Aug. 28, spent the day & night at Cinnaminson.
Aug. 29, spent the day & night at Cinnaminson.
[fol. 311] Aug. 30, spent the day & night at Cinnaminson.
Aug. 31, spent the day & night at Cinnaminson.
Sept. 1, spent the day & night at Cinnaminson.
Sept. 2, spent the day & night at Cinnaminson.
Sept. 3, went to the office for a few hours today. Spent the night at Cinnaminson.
Sept. 4, left on Bar Harbor express. Spent the night en route to Bar Harbor.
Sept. 5, at Bar Harbor.
Sept. 6, at Bar Harbor.
Sept. 7, at Bar Harbor.
Sept. 8, returning to Cinnaminson with family. All night en route.
Sept. 9, spent the night at Cinnaminson.
Sept. 10, spent the day in the office and the night at Cinnaminson.
Sept. 11, attended Directors Meeting of Pennsylvania Railroad Co. Spent the night at Cinnaminson.
Sept. 12, sailed for Nauheim on S. S. "Bremen" tonight.
Sept. 13, at Sea. Family living at Cinnaminson.

Sept. 14, at Sea. Family at Cinnaminson.
Sept. 15, at Sea. Family at Cinnaminson.
Sept. 16, at Sea.
Sept. 17, at Nauheim.
Sept. 18, at Nauheim.
Sept. 19, at Nauheim.
Sept. 20, at Nauheim.
Sept. 21, at Nauheim.
Sept. 22, at Nauheim.
Sept. 23, at Nauheim.
Sept. 24, at Nauheim.
Sept. 25, at Nauheim.
[fol. 312] Sept. 26, at Nauheim.
Sept. 27, at Nauheim.
Sept. 28, at Nauheim.
Sept. 29, at Nauheim.
Sept. 30, at Nauheim.
Oct. 1, at Nauheim.
Oct. 2, at Nauheim.
Oct. 3, at Nauheim.
Oct. 4, at Nauheim.
Oct. 5, at Nauheim.
Oct. 6, at Nauheim.
Oct. 7, at Nauheim.
Oct. 8, at Nauheim.
Oct. 9, at Nauheim. Mrs. Dorrance sailed from New York on S. S. Berengaria to join Dr. Dorrance at Paris.
Oct. 10, at Nauheim.
Oct. 11, at Nauheim.
Oct. 12, At Nauheim.
Oct. 13, at Nauheim.
Oct. 14, Left Nauheim for Paris.
Oct. 15, at Paris.
Oct. 16, at Paris.
Oct. 17, at Paris.
Oct. 18, at Paris.
Oct. 19, sailed with Mrs. Dorrance from Cherbourg on S. S. Berengaria.
Oct. 20, at sea.
Oct. 21, at sea.
Oct. 22, at sea.
Oct. 23, at sea.
Oct. 24, at sea.

Oct. 25, arrived at New York with Mrs. Dorrance on S. S. Berengaria. Spent the night at Radnor.
[fol. 313] Oct. 26, spent the day & night at Radnor.
Oct. 27, spent the day & night at Radnor.
Oct. 28, spent the day & night at Radnor.
Oct. 29, spent the night at Radnor.
Oct. 30, spent the night at Radnor.
Oct. 31, spent the night at Radnor.
Nov. 1, spent the night at Radnor.
Nov. 2, spent the night at Radnor.
Nov. 3, spent the night at Radnor.
Nov. 4, spent the night at Cinnaminson.
Nov. 5, Dr. & Mrs. Dorrance voted at Cinnaminson today. Spent the night at Cinnaminson.
Nov. 6, spent the night at Radnor.
Nov. 7, spent the night at Radnor.
Nov. 8, spent the night at Radnor.
Nov. 9, spent the night at Radnor.
Nov. 10, spent the night at Radnor.
Nov. 11, spent the day & night at Radnor.
Nov. 12, spent a few hours in the office today. Spent the night at Radnor.
Nov. 13, spent the night at Radnor.
Nov. 14, attended Directors Meeting, Girard Trust Co. Spent the night at Radnor.
Nov. 15, attended Directors' Meeting of Phila. Natl. Bank. Spent the night at Radnor.
Nov. 16, spent the day and night at Radnor.
Nov. 17, spent the day and night at Radnor.
Nov. 18, spent the night at Radnor.
Nov. 19, spent the day in the office—night at Radnor.
Nov. 20, attended Directors' Meeting, Guaranty Trust Co. Spent the night at Radnor.
[fol. 314] Nov. 21, attended Directors' Meeting, Girard Trust Co. Spent the night at Radnor.
Nov. 22, spent the day in the office. Spent the night at Radnor.
Nov. 23, dinner & dance this evening at "Woodcrest". Spent the night at Radnor.
Nov. 24, spent the day and night at Radnor.
Nov. 25, spent the night at Radnor. Attended Phila. Natl. Bank Meeting.
Nov. 26, spent the night at Radnor.

Nov. 27, spent the night at Radnor.
Nov. 28, spent the night at Radnor. Attended Girard Trust Co. Directors' Meeting.
Nov. 29, spent the night at Radnor.
Nov. 30, spent the night at Radnor.
Dec. 1, spent the night at Radnor.
Dec. 2, spent the night at Radnor. Attended Meeting of Phila. Natl. Bank Directors.
Dec. 3, spent the night at Radnor.
Dec. 4, spent the night at Radnor.
Dec. 5, attended Girard Trust Co. Directors' Meeting. Spent the night at Radnor.
Dec. 6, spent the night at Radnor.
Dec. 7, spent the night at Radnor.
Dec. 8, spent the night at Radnor.
Dec. 9, attended Directors' Meeting of Prudential Insurance Co. at Newark, N. J. Spent the night at Radnor.
Dec. 10, spent the night at Radnor.
Dec. 11, spent the night at Radnor.
Dec. 12, spent the night at Radnor.
Dec. 13, spent the night at Radnor.
[fol. 315] Dec. 14, spent the night at Radnor.
Dec. 15, spent the night at Radnor.
Dec. 16, spent the night at Radnor.
Dec. 17, spent the night at Radnor.
Dec. 18, spent the night at Radnor.
Dec. 19, spent the night at Radnor.
Dec. 20, spent the night at Radnor.
Dec. 21, spent the night at Radnor.
Dec. 22, spent the night at Radnor.
Dec. 23, spent the night at Radnor.
Dec. 24, spent the night at Radnor.
Dec. 25, spent the night at Radnor.
Dec. 26, spent the night at Radnor.
Dec. 27, spent the night at Bellevue-Stratford Hotel, Phila.
Dec. 28, spent the night at Bellevue-Stratford Hotel, Phila.
Dec. 29, spent the day & night at Radnor.
Dec. 30, spent the night at Radnor.
Dec. 31, spent the night at the Bellevue-Stratford Hotel, Phila.

[fol. 316] 1930

Jan. 1, spent the night at Radnor.
Jan. 2, spent the night at Radnor.
Jan. 3, spent the night at Radnor.
Jan. 4, spent the night at Radnor.
Jan. 5, spent the night at Radnor.
Jan. 6, spent the night at Radnor.
Jan. 7, spent the night at Radnor.
Jan. 8, spent the night at Radnor.
Jan. 9, spent the night at Radnor.
Jan. 10, dinner for sixty men in honor of Mr. John A. Hartford. Spent the night at Radnor.
Jan. 11, spent the night at Radnor.
Jan. 12, spent the night at Radnor.
Jan. 13, attended meeting of Prudential Board. Attended Vestry Meeting at Riverton. Spent the night with Mrs. Dorrance at Cinnaminson.
Jan. 14, spent the night at Bellevue Stratford Hotel, Phila.
Jan. 15, attended Directors' Meeting Guaranty Trust Co. Spent the night at Radnor.
Jan. 16, spent the night at Radnor. Attended Directors' Meeting Girard Trust Co.
Jan. 17, spent the night at Radnor.
Jan. 18, spent the night at Radnor.
Jan. 19, spent the night at Radnor.
Jan. 20, sworn in as Director Philadelphia National Bank. Address Cinnaminson, New Jersey. Spent the night at Radnor.
Jan. 21, spent the night at Radnor.
Jan. 22, spent the night at Radnor. Attended meeting of P. R. R. Board.
[fol. 317] Jan. 23, attended meeting of Girard Trust Co. Spent the night at Radnor.
Jan. 24, spent the night at Radnor.
Jan. 25, spent the day & night at Radnor.
Jan. 26, spent the day and night at Radnor.
Jan. 27, spent the night at Radnor.
Jan. 28, spent the night at Radnor.
Jan. 29, spent the night at Radnor.
Jan. 30, spent the night at Radnor.
Jan. 31, spent the night at Radnor.
Feb. 1, spent the night at Radnor.

Feb. 2, spent the night at Radnor.
Feb. 3, spent the night at Radnor.
Feb. 4, spent the night at Radnor.
Feb. 5, attended Directors Meeting of Guaranty. Went to Chicago on the "Broadway". Spent the night en route.
Feb. 6, visiting Chicago plant. Spent the night at Blackstone Hotel.
Feb. 7, spent the night en route from Chicago.
Feb. 8, spent the day in the office and the night at Radnor.
Feb. 9, spent the day and night at Radnor.
Feb. 10, Dr. & Mrs. Dorrance spent the night at Cinnaminson. Attended Directors Meeting of Prudential Insurance Co. Board.
Feb. 11, spent the day in the office and night at Radnor.
Feb. 12, spent the day in the office and night at Radnor.
Feb. 13, attended Director's Meeting Penna. R. R. Co. Attended Directors Meeting of Girard Trust Co. Spent the night at Radnor.
[fol. 318] Feb. 14, spent the day in the office and night at Radnor.
Feb. 15, spent the morning in the office. Mr. Seabrook called. Spent the night at Radnor.
Feb. 16, spent the day and night at Woodcrest.
Feb. 17, spent the day in the office and night at Radnor.
Feb. 18, spent the day at the office and the night at Radnor.
Feb. 19, attended Directors Meeting of Guaranty Trust Co. Spent the night at Radnor.
Feb. 20, attended Managers Meeting of Girard Trust Co. Spent the night at Radnor.
Feb. 21, spent the day in the office and night at Radnor. Mr. John A. Hartford had lunch at our office.
Feb. 22, holiday at the factory. Spent the day & night at Radnor.
Feb. 23, spent the day & night at Radnor.
Feb. 24, went to Palm Beach on the Miamian with Mrs. Dorrance to visit Mr. and Mrs. E. T. Stotesbury. Spent the night on the train.
Feb. 25, arrived at Palm Beach. Visiting Mr. and Mrs. E. T. Stotesbury.
Feb. 26, at Palm Beach, Fla.
Feb. 27, at Palm Beach.
Feb. 28, at Palm Beach.

Mar. 1, at Palm Beach.
Mar. 2, at Palm Beach.
Mar. 3, at Palm Beach.
Mar. 4, at Palm Beach.
Mar. 5, at Palm Beach, Fla.
[fol. 319] Mar. 6, at Palm Beach, Fla.
Mar. 7, left Palm Beach on "Miamian". Spent night en route.
Mar. 8, arrived in Phila. at 4:13 P. M. Spent the night at Radnor.
Mar. 9, spent the day & night at Radnor.
Mar. 10, spent the day & night at Radnor.
Mar. 11, did not come to the office today. Attended Special Meeting of P. R. R. Board this afternoon. Spent the night at Radnor.
Mar. 12, attended Directors Meetings of P. R. R. Spent the afternoon at the office. Spent the night at Radnor.
Mar. 13, attended Directors Meeting Girard Trust Co. Spent the night at Radnor.
Mar. 14, attended Executive Committee meeting Philadelphia National Bank. Spent the night at Radnor. Attended Directors Meeting Philadelphia & Camden Ferry Co.
Mar. 15, spent the night at Radnor.
Mar. 16, spent the day & night at Radnor.
Mar. 17, attended Directors Meeting Philadelphia National Bank. Spent the night at Radnor.
Mar. 18, spent the day in the office. Attended Vestry Meeting Christ Church, Riverton. Spent the night with Mrs. Dorrance & Jack at Cinnaminson.
Mar. 19, attended Directors Meeting of Guaranty Trust Co. Attended Banquet at Savoy-Plaza to Mr. C. C. Con-
[fol. 320] way. Spent the night in Mr. Elisha Lee's private car en route to Phila.
Mar. 20, attended Managers Meeting of Girard Trust Co. Spent the day in the office and night at Radnor.
Mar. 21, attended Directors Meeting of Philadelphia National Bank. Spent the night at Radnor.
Mar. 22, spent the day at the office and night at Radnor.
Mar. 23, at Radnor all day.
Mar. 24, attended Director's Meeting Phila. Natl. Bank. Spent the night at Radnor.
Mar. 25, spent the day in the office. Spent the night at Radnor.

Mar. 26, confined to the house at Radnor on account of illness.
Mar. 27, confined to the house at Radnor on account of illness.
Mar. 28, confined to the house at Radnor on account of illness.
Mar. 29, had reservations to sail on S S "Europa" but was obliged to cancel on account of illness.
Mar. 30, at "Woodcrest", Radnor.
Mar. 31, at Radnor.
Apr. 1, at Radnor.
Apr. 2, at Radnor.
Apr. 3, at Radnor.
Apr. 4, at Radnor on account of illness.
Apr. 5, confined to the house at Radnor.
Apr. 6, at Radnor.
Apr. 7, at Radnor.
Apr. 8, confined to house at Radnor on account of illness.
[fol. 321] Apr. 9, at Radnor.
Apr. 10, at Radnor on account of illness.
Apr. 11, at Radnor.
Apr. 12, sailed on S S Bremen for Bad Nauheim. Mrs. Dorrance & Miss Charlotte sailed for England on same steamer.
Apr. 13, at sea.
Apr. 14, at sea.
Apr. 15, at sea.
Apr. 16, arrived at Bremen.
Apr. 17, at Bad-Nauheim.
Apr. 18, at Bad-Nauheim.
Apr. 19, at Bad-Nauheim.
Apr. 20, at Bad-Nauheim.
Apr. 21, at Bad-Nauheim.
Apr. 22, at Bad-Nauheim.
Apr. 23, at Bad-Nauheim.
Apr. 24, at Nauheim.
Apr. 25, at Nauheim.
Apr. 26, at Nauheim.
Apr. 27, at Nauheim.
Apr. 28, at Nauheim.
Apr. 29, at Nauheim.
Apr. 30, at Nauheim.

May 1, at Nauheim.
May 2, at Nauheim.
May 3, at Nauheim.
May 4, at Nauheim.
May 5, at Nauheim.
May 6, at Nauheim.
May 7, at Nauheim.
May 8, at Nauheim.
May 9, at Nauheim.
May 10, at Nauheim.
May 11, at Nauheim.
May 12, at Nauheim.
May 13, at Nauheim.
[fol. 322] May 14, at Nauheim. Miss Charlotte Dorrance presented at Court of St. James, London, today.
May 15, at Nauheim.
May 16, at Nauheim.
May 17, at Nauheim.
May 18, at Nauheim.
May 19, at Nauheim.
May 20, at Nauheim.
May 21, finished "cure" at Nauheim today.
May 22, in Europe.
May 23, in Germany.
May 24, at Baden-Baden.
May 25, at Baden-Baden.
May 26, taking "after cure" in Europe.
May 27, in Europe.
May 28, National Hotel, Lucerne, Switzerland.
May 29, National Hotel, Lucerne, Switzerland.
May 30, Switzerland.
May 31, Switzerland.
June 1, Switzerland.
June 2, in Europe.
June 3, in Europe.
June 4, in Europe.
June 5, in Europe.
June 6, in Europe.
June 7, in Europe.
June 8, in Paris.
June 9, at Paris.
June 10, at Paris.
June 11, at Paris.

June 12, at Paris.
June 13, at Paris.
June 14, left Cherbourg on board S. S. "Berengaria".
June 15, at sea.
[fol. 323] June 16, at sea.
June 17, at sea.
June 18, at sea.
June 19, at sea.
June 20, at sea.
June 21, landed at New York at eight twenty tonight 36 hours late. Spent the night at "Woodcrest".
June 22, spent the day and night at Woodcrest.
June 23, spent the night at Radnor.
June 24, spent the night at Radnor.
June 25, spent the night at Radnor.
June 26, spent the night at Radnor.
June 27, spent the night at Radnor.
June 28, spent the night at Radnor.
June 29, spent the night at Cinnaminson with Mrs. Dorrance.
June 30, spent the night at Cinnaminson. Mrs. Dorrance, Peggy, Jack and servants went to Bar Harbor.
July 1, spent the day in the office and night at Cinnaminson.
July 2, went to Bar Harbor at 4:40 P. M.
July 3, at Bar Harbor, Maine.
July 4, at Bar Harbor.
July 5, at Bar Harbor.
July 6, at Bar Harbor.
July 7, at Bar Harbor.
July 8, at Bar Harbor.
July 9, at Bar Harbor.
July 10, at Bar Harbor.
July 11, at Bar Harbor.
July 12, at Bar Harbor.
July 13, at Bar Harbor.
July 14, at Bar Harbor.
July 15, at Bar Harbor.
July 16, at Bar Harbor.
[fol. 324] July 17, at Bar Harbor.
July 18, at Bar Harbor.
July 19, at Bar Harbor.
July 20, at Bar Harbor.

July 21, at Bar Harbor.
July 22, at Bar Harbor.
July 23, at Bar Harbor.
July 24, at Bar Harbor.
July 25, at Bar Harbor, Me.
July 26, at Bar Harbor.
July 27, at Bar Harbor, Maine.
July 28, at Bar Harbor, Me.
July 29, left Bar Harbor to return to Cinnaminson. Spent the night on the train.
July 30, spent the day in the office and the night at Cinnaminson.
July 31, stayed at Cinnaminson all day on doctor's recommendation.
Aug. 1, at Cinnaminson.
Aug. 2, confined to the house at Cinnaminson.
Aug. 3, confined to the house at Cinnaminson.
Aug. 4, decided to return to Bar Harbor today. Left on 4:40 Bar Harbor Express. Spent the night on the train.
Aug. 5, at "Islecote", Bar Harbor.
Aug. 6, at Bar Harbor.
Aug. 7, at Bar Harbor.
Aug. 8, at Bar Harbor.
Aug. 9, at Bar Harbor.
Aug. 10, at Bar Harbor.
Aug. 11, at Bar Harbor. Mr. Willits left for Bar Harbor today.
Aug. 12, at Bar Harbor.
Aug. 13, at Bar Harbor. Large party at Bar Harbor Club in honor of Misses Fifi & Charlotte.
[fol. 325] Aug. 14, at Bar Harbor.
Aug. 15, at Bar Harbor. Mr. Willits returned to the office today from Bar Harbor.
Aug. 16, at Bar Harbor.
Aug. 17, at Bar Harbor.
Aug. 18, at Bar Harbor.
Aug. 19, at Bar Harbor.
Aug. 20, at Bar Harbor.
Aug. 21, at Bar Harbor.
Aug. 22, Mr. Jones went to Bar Harbor today to visit Dr. J. T. Dorrance.
Aug. 23, at Bar Harbor.
Aug. 24, at Bar Harbor.

Aug. 25, at Bar Harbor.

Aug. 26, at Bar Harbor. Mr. Jones returned to the office today from Bar Harbor.

Aug. 27, Dr. G. M. Dorrance went to Bar Harbor today to visit Dr. J. T. Dorrance.

Aug. 28, at Bar Harbor.

Aug. 29, at Bar Harbor.

Aug. 30, at Bar Harbor.

Aug. 31, at Bar Harbor.

Sept. 1, Dr. G. M. Dorrance returned to Phila. & Camden today. Dr. J. T. Dorrance is still at Bar Harbor.

Sept. 2, at Bar Harbor.

Sept. 3, at Bar Harbor.

Sept. 4, at Bar Harbor.

Sept. 5, at Bar Harbor.

Sept. 6, at Bar Harbor.

Sept. 7, went to Newport, R. I. today.

Sept. 8, at Newport, R. I.

Sept. 9, returned to Bar Harbor with Mrs. Dorrance from Newport.

[fol. 326] Sept. 10, at Bar Harbor.

Sept. 11, at Bar Harbor.

Sept. 12, at Bar Harbor.

Sept. 13, at Bar Harbor.

Sept. 14, left Bar Harbor today. Spent the night on the train.

Sept. 15, arrived at Cinnaminson today with Mrs. Dorrance, Peggy & Jack from Bar Harbor.

Sept. 16, confined to the house at Cinnaminson on account of illness.

Sept. 17, confined to the house at Cinnaminson on account of illness.

Sept. 18, confined to the house at Cinnaminson on account of illness.

Sept. 19, confined to the house at Cinnaminson on account of illness.

Sept. 20, confined to the house at Cinnaminson on account of illness.

Sept. 21, Dr. John T. Dorrance died at his home at Pomona Farms, Cinnaminson, N. J., at eight forty A. M.

[fol. 327] II. AFFIDAVIT OF ETHEL M. DORRANCE

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Ethel M. Dorrance, being duly sworn according to law, deposes and says that she is the widow and one of the executors under the will of John T. Dorrance, deceased, and that the facts hereinafter in this affidavit set forth are true and correct:

I have read the injunction affidavits of my daughter Charlotte Dorrance Wright and of my brother-in-law and co-executor, George Morris Dorrance, M. D. The statements made in their affidavits regarding the use of "Woodcrest" and "Pomona Farms" during my husband's life-time, are correct.

It is not true, as stated in Mr. Kelley's "Answering Affidavit", paragraph 20, page 8, that the statements in the Bill of Complaint in this case, and the supporting affidavits of my daughter and my brother-in-law are contrary to the facts to which I testified in the Pennsylvania proceedings, pages 250a-358a.

Because of my husband's desire in his life-time to be regarded as a "legal resident" of New Jersey and to have his estate administered in New Jersey, my co-executors and I felt it our duty to do our utmost to resist Pennsylvania's claim that my husband, at the date of his death, was domiciled in that State. We presented whatever evidence we could to establish our contention that Dr. Dorrance was domiciled in New Jersey.

But it was impossible to present evidence that our family ever lived in New Jersey after November 14, 1925. In my testimony, I stated that Dr. Dorrance, our children and I occasionally returned to "Pomona Farms" at Cinnaminson, New Jersey, and spent one or more nights there. But [fol. 328] I did not say that all of us were ever together there at the same time, nor did I say that any of us lived at "Pomona Farms" regularly. In effect we visited our former home occasionally. Dr. Dorrance was under the impression that if we did that, and kept the place in New Jersey open and ready for occupancy, he could by declaring himself a resident of New Jersey, retain his domicile there.

My testimony in Pennsylvania was as strong as I could

possibly make it against Pennsylvania's claim. If I had been asked more questions by the attorneys for Pennsylvania, I would have been compelled to make admissions which would have been very damaging to our then contention.

I would have been compelled to admit that I knew that Dr. Dorrance, notwithstanding our continuous residence at Radnor, was trying to be regarded as a "legal resident" of New Jersey; that one of his reasons for this was his unwillingness to pay the Pennsylvania 4 mills tax on intangible property; that I had instructed our older daughters to go to Cinnaminson and spend a night there periodically in an effort to support Dr. Dorrance's desire to be regarded as a "legal resident" of New Jersey; that our entire family was never at "Pomona Farms" at any time prior to Dr. Dorrance's fatal illness; that when we moved to Radnor, Dr. Dorrance took with him his library of which he was extremely fond; that our chauffeur, Charles Hacker, was moved to Radnor with his family; and that at no time during Dr. Dorrance's life-time did he ever suggest to me or to any other member of his family, as far as I know, that we might some day abandon "Woodcrest" as our home and return to Cinnaminson.

At the Pennsylvania trial, a number of our former servants testified for the State. We made no effort to contradict their testimony. Except in a few unimportant details, their testimony was correct.

[fol. 329] None of my children was permitted to take the witness stand in Pennsylvania. None of them could have testified that our family had ever lived at "Pomona Farms" after November 14, 1925.

Whatever Dr. Dorrance's motives may have been in purchasing "Woodcrest",—and I gave them to the best of my ability in the Pennsylvania proceedings,—he did not move to "Woodcrest" with his family for a limited time or for a temporary purpose. It became our home on November 14, 1925, and during Dr. Dorrance's life-time he never contemplated removing our home to any other place.

When I testified in the Pennsylvania proceedings, I had never seen the diary which Miss Britton kept for Dr. Dorrance, the entries in which, marked "Exhibit No. 1", are attached to Miss Britton's affidavit in this case.

I have carefully gone through the diaries and am satis-

fied that they correctly state the places where Dr. Dorrance spent his nights from January 1, 1926 to the date of his death.

Referring to the periods which Dr. Dorrance spent at Cinnaminson in the summers of 1926, 1928, 1929 and 1930:

On July 16, 1926, we closed "Woodcrest" for 10 days to give the servants a vacation. During this period, Dr. Dorrance lived at Cinnaminson. I went to Jamestown, R. I., when "Woodcrest" was closed.

In the summers of 1928, 1929 and 1930, all of our household servants were taken from "Woodcrest" to Bar Harbor, Maine, and, therefore, Dr. Dorrance could not live at "Woodcrest" when he spent time at the factory.

In 1928, after our family left Bar Harbor, the servants were given a few days' vacation after which they cleaned "Woodcrest" and prepared it for occupancy. Dr. Dorrance and I lived at Cinnaminson from September 13, to [fol. 330] September 20, when we returned to "Woodcrest".

In 1929, the servants preceded us to Bar Harbor. They went by automobile. Dr. Dorrance and I lived at Cinnaminson for 4 days to enable them to get to Bar Harbor and have the cottage ready for us; and we then went to Bar Harbor by train.

In the fall of 1929, Dr. Dorrance and I left for Europe before the servants had been able to take their vacations and prepare "Woodcrest" for occupancy. Our two youngest children accompanied me from Bar Harbor to Cinnaminson on September 8. That is the "family" to which the diary refers. Our other children visited friends in Pennsylvania until "Woodcrest" was ready for occupancy.

In 1930, as in 1929, the servants preceded Dr. Dorrance and me to Bar Harbor. We spent 3 days at Cinnaminson to enable them to get there. The circumstances which caused Dr. Dorrance to be at Cinnaminson at the time of his death, are as stated by my daughters in their sworn statements in this case.

Ethel M. Dorrance.

Sworn to and subscribed before me this 18th day of April, 1935.

H. L. Kober, Notary Public. (Seal.)

My commission expires January 14, 1939.

[fol. 331] III. AFFIDAVIT OF WILLIAM H. DONNELLY

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

William H. Donnelly, being duly sworn according to law, deposes and says:

At the instance of the plaintiffs in these casese I made an investigation at the State House at Trenton, N. J., for the purpose of learning what the available balances have been in the "State Fund" from 1930 to date.

I interviewed Abram W. Vermuelen, Chief Accountant in the office of the Comptroller of the Treasury of the State of New Jersey, State House, Trenton, N. J., who gave me the following figures taken from the official records of the State:

Free balances on hand of cash on the basis of an actual cash position, disregarding accounts receivable which the comptroller's office deem uncollectible at the present time, as follows:

June 30, 1931	Surplus	$ 361,321.13
June 30, 1932	Deficit	2,382,493.77
June 30, 1933	Deficit	2,708,297.09
June 30, 1934	Surplus	1,295,573.86

On June 30, 1934 there was also a reserve cash fund set aside for contingencies, of $1,000,000.

There are no figures for the balance on June 30, 1930 because the chief accountant stated he could not guarantee such figures as the State accounting system was wholly inadequate up to that date.

It is impossible to get the current balance in the State fund at this date. That balance will be ascertainable only on June 30, 1935.

Refunds of inheritance tax are payable only out of the free balances in the State fund, so that it would have been [fol. 332] impossible to pay any refunds on June 30, 1932 and June 30, 1933; and the amount available at June 30, 1934 was less than $3,000,000.

William H. Donnelly.

Sworn to and subscribed before me this 18th day of April, 1935.

H. L. Kober, Notary Public. (Seal).

My commission expires January 14, 1939.

[fol. 333] IV. AFFIDAVIT OF ETHEL DORRANCE COLKET

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss.:

Ethel Dorrance Colket, being duly sworn according to law, deposes and says:

I am a daughter of Dr. John T. Dorrance, deceased.

I have read the Bills of Complaint, and the Injunction Affidavits filed in the cases of Elinor Dorrance Hill v. J. H. Thayer Martin, et al., and Ethel M. Dorrance, et al. v. J. H. Thayer Martin, et al., in the United States District Court for the District of New Jersey, In Equity, Nos. 5092 and 5091, respectively.

The facts set forth in the Bills of Complaint and the Injunction Affidavits, as they relate to the use of "Pomona Farms", Cinnaminson, N. J. and "Woodcrest", Radnor, Pennsylvania, after November 14, 1925, are correct.

After November 14, 1925, I returned to "Pomona Farms" only on rare occasions.

My father, my mother, my sisters, my brother and I were never at "Pomona Farms" at the same time on any day after November 14, 1925, until my father's fatal illness in September, 1930.

Our only family home after November 14, 1925, was "Woodcrest", Radnor. There we lived together continuously except when we went to New England for summer vacation.

I never heard my father indicate in any way that our family home would at any time be moved to any place other than "Woodcrest", or that "Woodcrest" had been acquired for a temporary purpose or for temporary use. [fol. 334] It was prepared for occupancy, improved and maintained as a permanent establishment.

Ethel Dorrance Colket.

Sworn and subscribed to before me this sixteenth day of April, 1935.

H. L. Kober, Notary Public. (Seal).

My commission expires January 14, 1939.

[fol. 335] V. Affidavit of Elinor Dorrance Hill

Commonwealth of Pennsylvania,
County of Philadelphia, ss.:

Elinor Dorrance Hill, being duly sworn according to law, deposes and says:

During the period beginning November 14, 1925 and ending September 21, 1930, I was at Pomona Farms, Cinnaminson, New Jersey, on only three occasions. Two or three days before I was married I visited my grandmother and stayed for about two hours. In the Summer of 1928 I visited my father at Cinnaminson and stayed for three days. The other occasion was when my father was ill in September, 1930.

I was married on October 1, 1927. My husband never saw Cinnaminson until my father's last illness, when the entire family went to Cinnaminson.

From the date of my marriage until the date of father's death my husband and I visited my family at Radnor at least two week-ends per month. Except for the first Christmas after our marriage we spent Christmas, Thanksgiving, Easter and all other holidays with my family at Radnor. Father was always at home on holidays as were the other members of the family.

Elinor Dorrance Hill.

Sworn to and subscribed before me this seventeenth day of April, 1935.

H. L. Kober, Notary Public. (Seal).

My commission expires January 14, 1939.

[fol. 336] VI. Affidavit of Charles G. Hacker

Commonwealth of Pennsylvania,
County of Philadelphia, ss.:

Charles G. Hacker, being duly sworn according to law deposes and says:

I was employed by Dr. John T. Dorrance as chauffeur in December 1918.

From December 1918 to November 14, 1925 I lived with my family in a house on the Dorrance place known as "Pomona Farms", in Cinnaminson, N. J.

On November 14, 1925, my family and I moved into a house at "Woodcrest", Radnor, Pennsylvania. I have lived there ever since that date.

Prior to November 14, 1925, my regular duties consisted of driving Mrs. Dorrance and members of the Dorrance family during the day-time, of being at the Campbell Soup Company factory in Camden, N. J., at five o'clock P. M. to take Dr. Dorrance to Cinnaminson, and of driving Dr. and Mrs. Dorrance in the evenings, Sundays and holidays.

After November 14, 1925, my duties were the same except that I no longer went to the factory to take Dr. Dorrance home. A factory car usually brought him to "Woodcrest".

I lived at "Woodcrest" all of the year except when the Dorrance family was in New England for the summer. I always accompanied them, with my family. We were at Jamestown, R. I., in the summers of 1926 and 1927, and at Bar Harbor, Maine, in the Summers of 1928, 1929 and 1930.

I saw Dr. Dorrance at "Woodcrest" practically every day, except when he was in Europe, in the South, or in New England.

Dr. Dorrance spent practically every week-end at "Woodcrest" while he was in this part of the country [fol. 337] Frequenly, while his mother was at Cinnaminson, we drove over to see her on Sunday morning, returning to "Woodcrest" before lunch-time.

When I was driving Dr. Dorrance and he wanted me to go to "Woodcrest", he always said, "Home". If he wanted me to drive to Cinnaminson, he said "Farm".

Mrs. Dorrance and her children also directed me to go "home", when they wanted to be driven to "Woodcrest". I scarcely ever drove them to Cinnaminson after November 14, 1925.

Charles G. Hacker.

Sworn and subscribed to before me this sixteenth day of April, 1935.

H. L. Kober, Notary Public. (Seal).

My commission expires January 14, 1939.

[fol. 338] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

In Equity

No. 5091

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M. D. Arthur C. Dorrance and Camden Safe Deposit and Trust Company, executors of the Last Will and Testament of John T. Dorrance, Deceased, Plaintiffs

vs.

J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey; William D. Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey; Frank J. Murray, Comptroller of the State of New Jersey; William H. Albright, State Treasurer of the State of New Jersey; and David T. Wilentz, Attorney General of the State of New Jersey, Defendants

In Equity

No. 5092

ELINOR DORRANCE HILL, Plaintiff,

vs.

J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey; William D. Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey; Frank J. Murray, Comptroller of the State of New Jersey; William H. Albright, State Treasurer of the State of New Jersey; and David T. Wilentz, Attorney General of the State of New Jersey, Defendants

On Motion for Preliminary Injunction before the Court Specially Constituted under Section 266 of the Judicial Code.

Before Wooley and Davis, Circuit Judges, and Avis, District Judge

OPINION—Filed June 3, 1935

[fol. 339] WOOLLEY, Circuit Judge:

On September 21, 1930, John T. Dorrance died. His place of business had been Camden, New Jersey. Dur-

ing the later years of his life he maintained at the same time three domestic establishments: one at Cinnaminson in the State of New Jersey, another at Radnor in the Commonwealth of Pennsylvania, and still another at Bar Harbor in the State of Maine. He spent a portion of the summer of the year 1930 at his Bar Harbor residence and, on returning, died at his New Jersey residence where he had been staying while his Pennsylvania residence was being made ready for occupancy.

Dorrance, by his will, declared himself a resident of the Township of Cinnaminson, in the County of Burlington and State of New Jersey and, by express provision, required his executors, under severe penalties for disobedience, to offer his will for probate in that state. Accordingly, on October 1, 1930, they offered his will for probate before the Surrogate of Burlington County, New Jersey, and in due course that official granted them letters testamentary. Thereupon the executors, acting under the jurisdiction of the Orphans' Court of Burlington County, New Jersey, set about to administer the vast estate of the testator which consisted almost entirely of intangible personal property.

The State of New Jersey evidently took it for granted that, as Dorrance had, on his own declaration, been a resident of that state and as his estate was being administered under letters testamentary granted in a county thereof, the situs of his intangible personal property was New Jersey and, accordingly, the property was subject to inheritance tax under the laws of that state. On the other hand, the Commonwealth of Pennsylvania, acting more promptly, claimed that Pennsylvania was the domicile of Dorrance and therefore was the situs of his intangible personal property, and for that reason his property was subject to inheritance tax under the laws of that commonwealth. The State of Maine, evidently recognizing that the establishment of Dorrance at Bar Harbor was only a summer residence, has made no claim for taxes.

[fol. 340] Thus there arose a controversy, nominally between persons but actually between states, which by reason of the stake has grown to major proportions. An understanding of its present phase can be had only by giving in brief outline the administrative and judicial proceedings which have been pursued concurrently and along somewhat parallel lines in the two states.

Early in the New Jersey administration of the Dorrance estate the Commonwealth of Pennsylvania formally claimed that the decedent was at the time of his death domiciled in Radnor Township, Pennsylvania. Acting under claim of authority of Pennsylvania inheritance tax laws the Register of Wills of Delaware County, Pennsylvania, appointed an appraiser who, on April 20, 1931, filed an appraisement of the Dorrance estate at $199,999,000 upon which was computed and assessed inheritance tax due Pennsylvania in the sum of $31,465,200.

On May 14, 1931, the executors, resisting taxation in Pennsylvania, appealed from this assessment to the Orphans' Court of Delaware County, Pennsylvania. That court sustained the executors' appeal and set aside the assessment. Thereupon the Commonwealth of Pennsylvania appealed to the Supreme Court of Pennsylvania. On September 26, 1932, that court reversed the decree of the Orphans' Court and reinstated, in a modified amount, the tax assessment which the Register of Wills of Delaware County had made. On petition, the Supreme Court of the United States, denying the State of New Jersey a right to intervene, refused the executors a writ of certiorari because (it was thought) it could not find that a federal question had been presented to and passed upon by the Supreme Court of Pennsylvania. Thereupon the Supreme Court of Pennsylvania on March 27, 1933, entered judgment for the Commonwealth of Pennsylvania and against the executors of the will of John T. Dorrance for transfer inheritance tax in the amount of $14,394,698.88, subject to an additional tax if and when the final determination of the amount of the federal estate tax should disclose that 80 per cent. thereof exceeded the above amount. The judgment included a tax upon the transfer of all of Dorrance's intangible personal property. On mandate a like judgment was entered in the [fol. 341] Orphans' Court of Delaware County and on March 31, 1933, the executors paid the tax with $104,278.03 interest and gave bond for $4,000,000 to meet the eventuality of an additional assessment because of the federal estate tax.

During all these proceedings in Pennsylvania, taxing officials and courts in New Jersey had been active in an endeavor to assess, sustain and collect from the Dorrance estate the inheritance tax in that state. Of this Pennsylvania

officials and the executors of the will were fully informed.

The New Jersey proceedings, stated as shortly as possible, were these: On various dates the executors of the will of Dorrance, aiding the taxing authorities in New Jersey, made returns to the Comptroller of the Treasury of New Jersey showing their testator was domiciled in New Jersey and supplying data for transfer inheritance tax purposes under the laws of that state, particularly that the decedent left no real property; that his entire estate, the market value of which was estimated at $115,121,518.92, consisted of personal property and almost entirely of intangible personal property; that all securities of the estate except a small amount not then important were located in New Jersey; and that after deductions for debts and expenses the net amount for distribution was $112,055,400.86. On this and other information the State Tax Commissioner of the State of New Jersey, on October 17, 1931, made an assessment of transfer inheritance tax against the decedent's estate in the sum of $12,247,333.52 with a notice that if the tax was not paid before a named date interest would be added at the rate of ten per cent per annum, and made an additional assessment in the sum of $4,521,143.90 on account of certain contingent remainders.

In December, 1931, the State Tax Commissioner of New Jersey opened this assessment pending the decision of the Pennsylvania courts of Pennsylvania's claim for inheritance tax and for the purpose of permitting additional information to be submitted regarding the domicile of Dor- [fol. 342] rance. However, on October 10, 1932, after the judgment of the Supreme Court of Pennsylvania had been rendered and offered in evidence, the State Tax Commissioner of New Jersey again made an assessment of transfer inheritance tax against the estate in the same amounts as before and with like penalty for non-payment, which, as before, included tax on intangible personal property.

On December 9, 1932, the executors, being charged with a tax due Pennsylvania and now resisting taxation by New Jersey challenged this (the final) assessment by appeal to the Ordinary of the State of New Jersey. On May 11, 1934, the Ordinary entered judgment in the Prerogative Court sustaining the State Tax Commissioner's final assessment, which was a decision opposed to and without giving credit to the decision of the Supreme Court of Pennsylvania on the issue of domicile. Thereupon the executors obtained a

writ of certiorari from the Supreme Court of New Jersey which after hearing sustained the judgment of the Prerogative Court. Although having notified the State Tax Commissioner of their intention to appeal to the Court of Errors and Appeals of New Jersey, the executors, with ample time yet to do so, have turned abruptly from the state courts of New Jersey to the federal courts in proceedings to which, in this rather long recital, we have at last arrived.

After the decision by the Supreme Court of New Jersey sustaining the inheritance tax imposed by the taxing authorities of that state upon the intangible personal property of John T. Dorrance, his executors in one suit and Elinor Dorrance Hill, his daughter and a beneficiary under his will, in another suit in the District Court of the United States for the District of New Jersey, pray by their bills that injunctions issue, temporary until hearing and perpetual thereafter, enjoining the defendants, officials of the State of New Jersey vested with power to assess and collect taxes, from collecting or attempting to collect inheritance tax on the transfer of intangible personal property of the estate of John T. Dorrance, deceased. The plaintiffs seek [fol. 343] this relief in the federal district court upon the assertion that the administrative proceedings of the State of New Jersey in respect to the assessment of the tax against the estate of John T. Dorrance had been completed with the decision of the Supreme Court of that state and that judicial proceedings thereon have not since been commenced, and on the contention that in such case the federal district court, specially constituted with three judges sitting, has jurisdiction under Section 266 of the Judicial Code, title 28 U. S. C. A., Section 380, of the constitutional questions raised:

The constitutional question which the plaintiffs particularly urge is to the effect that lawful inheritance taxation of intangible personal property of a decedent depends on its situs and its situs depends on the domicile of the owner at the time of his death; that the domicile of John T. Dorrance, the decedent in these cases, has been judicially determined by the Supreme Court of Pennsylvania to be the Commonwealth of Pennsylvania, and accordingly the situs of his intangible property is there also; that only Pennsylvania, the state of domicile, can impose the tax; that if the

New Jersey Inheritance Tax Act of April 20, 1909, ch. 228, in force at the time of the assessment of the tax in New Jersey, has been properly construed by the defendants (and by other administrative agencies of New Jersey) as applying to property the situs of which is outside of the State because the owner was not domiciled in New Jersey at the time of his death, it is unconstitutional under the Fourteenth Amendment to the Constitution of the United States; and if, on the other hand, the Act has not been properly construed by the defendants and administrative agencies of the State, the assessment violates the due process and equal protection clauses of the Fourteenth Amendment.

At a hearing on bills, answers and affidavits for preliminary injunctions, this court, three judges sitting, was met on the threshold with the question whether it has jurisdiction under Section 266 of the Judicial Code to grant preliminary relief in the legal circumstances. Putting aside for the moment the disputed factual question of domicile [fol. 344] of the decedent, there is on the question of jurisdiction no dispute of fact, that is, no dispute as to what has happened. The question of jurisdiction centers in the legal character of the things that have been done and in their legal consequences as they affect the plaintiffs' right to ask for and the power of this court to grant the relief for which they pray.

The theory underlying federal jurisdiction in such cases is that the administrative proceedings of the state in laying the tax must have been completed before the aggrieved taxpayer can call upon a federal court for relief. At that particular point, that is, before anything else shall have been done to correct or annul the assessment, the taxpayer may seek relief in a federal district court under the cited provision of the Judicial Code if an appropriate constitutional question is involved and other jurisdictional requisites are present. But the theory underlying federal jurisdiction in such case goes a step further and is to the effect that if the aggrieved taxpayer should pass the point at which administrative proceedings end and should take an appeal or otherwise seek relief in a state court whose jurisdiction of the matter is judicial, then he is bound to the tribunal of his choice and bound by its decision which, if error, is subject to correction only by the orderly method of appeal. In such case a shift in the midst of judicial pro-

ceedings from a state court to a federal court, by institution of suit in the latter for equitable relief, would, perhaps, be met by a plea of res judicata, and if the federal suit should operate as a stay of proceedings in the state court it is forbidden by federal law. (Judicial Code, Section 265.)

Executors of John T. Dorrance vs. J. H. Thayer Martin, State Tax Commissioner, et al.

Applying these observations to the doings in the New Jersey side of this controversy, it is possible that the administrative proceedings in respect to the tax may have ended with the assessment by the State Tax Commissioner and promptly thereafter the executors (other jurisdictional requisites being present) might have applied to a federal court for relief from threatened unconstitutional acts, conformably with somewhat like proceedings in the case of City Bank Farmers Trust Co., Executor, vs. Schnader, At- [fol. 345] torney General, 291 U. S. 24. However, instead of moving to a federal court at this critical point, when perhaps their way was clear, the executors appealed from the assessment to the Ordinary of New Jersey who, through the Prerogative Court of that state, approved the assessment. If the jurisdiction of the Prerogative Court is administrative, the executors, by appealing to that court, lost no opportunity to go elsewhere, for in that event the administrative action in laying the tax was not concluded with the assessment by the State Tax Commissioner but carried through to the Prerogative Court. Whether the jurisdiction of that Court is administrative as the executors contend is debatable. We could, conceivably, be persuaded under New Jersey authorities that its jurisdiction is judicial. However, as the matter is not dispositive of the case, we shall assume, without deciding, that its jurisdiction in respect to tax matters is administrative. If the administrative proceedings stopped with the decision of the Prerogative Court, then the executors could at that point have lawfully sought relief in a federal court from constitutional misconduct of state officials. Evidently believing the administrative proceedings did not stop there, the executors went on to the next New Jersey court—the Supreme Court—which they reached by certiorari. That court, in turn, affirmed the judgment of the Prerogative Court sustaining the assessment. Then it was, the execu-

tors said, the administrative proceedings came to an end, and at last they could go to the federal court. But that would be true only if the jurisdiction of the Supreme Court of New Jersey in respect to tax matters is administrative. If judicial, the administrative proceedings ended with the Prerogative Court and the executors were too late.

We are firmly of opinion that the jurisdiction of the Supreme Court of New Jersey in reviewing the action of statutory agencies created for the purpose of assessing and collecting taxes is judicial (Danford vs. Mecue, 31 N. J. L. 302; Traphagan vs. Township of West Hoboken, 39 N. J. L. 232; Flannigan vs. Plainfield, 44 N. J. L. 118; Jersey City vs. Lembeck, 31 N. J. E. 255; Roebling's Estate, 91 N. J. E. 72; Black's "Law of Taxation", 4th Edition, [fol. 346] Sec. 279a, Sec. 129h, p. 181), made so by the Constitution of New Jersey, and that the Court is of sufficiently high rank to be recognized and on occasion followed by court of the United States (Erie R. R. Co. v. Hilt, 247 U. S. 97, 101); that the administrative proceedings in respect to the tax ended at the latest with the judgment of the Prerogative Court and that in consequence the executors on turning to the federal district court after the judicial decision by the Supreme Court of New Jersey not only encountered a plea of res judicata but were confronted by Section 265 of the Judicial Code which, going directly to the jurisdiction of this Court to grant the relief asked for, provides that: "A writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except * * *."

It is intimated that because the Supreme Court of New Jersey had come to a judgment, the proceedings in that court similarly had come to an end, leaving the executors free to seek relief where they chose, whether by appeal to the New Jersey Court of Appeals or by suit in the United States District Court. But we are constrained to hold that, having passed by the ending of the administrative proceedings in respect to the tax and having thereafter entered a state judicial tribunal, the executors must abide the consequences, one of which is that proceedings in the state courts were not ended by the judgment of the Supreme Court. The prohibition of Section 265 of the Judicial Code denying the right of any court of the United States to stay proceedings in any court of a state is not limited to proceed-

ings in a court of a state "up to and including final judgment, but (extends) to the entire proceedings from the commencement of the suit until the execution issued on the judgment or decree is satisfied." Leath vs. Thomas, 97 Fed. 136, 138; Wayman vs. Southard, 10 Wheat. 1, 22. What may happen in consequence of the decision by the Supreme Court of New Jersey remains to be seen. The executors may appeal to the New Jersey Court of Errors and Appeals or the State may proceed to collect the tax validated by the New Jersey Supreme Court decision. The latter, in this state of the case, is not subject to interference by a federal district court; the former constitutes a remedy [fol. 347] at law with admittance finally to the Supreme Court of the United States if a valid constitutional question is involved.

Adverting finally to their main insistence, we are constrained to differ from the position of the executors that in all material respects the instant case parallels and is controlled by the City Bank Farmers Trust Co. vs. Schnader et al., 291 U. S. 24. While both cases concern the situs of and therefore the right to tax personal property of a decedent, the point of departure between the cases is that in the Schnader case resort was made to a federal court at the very end of the administrative proceedings or at what the court regarded as its equivalent and before judicial proceedings had been commenced in the Court of Common Pleas of Dauphin County, while in the instant case the taxpayers moved to the federal court not at the end of the administrative proceedings but intermediate the judicial proceedings.

Elinor Dorrance Hill vs. J. H. Thayer Martin, State Tax Commissioner

Elinor Dorrance Hill, daughter of John T. Dorrance, the decedent, and a beneficiary under his will, has brought an independent suit in the United States District Court on the theory that, though not a party to the tax proceedings in the two states and not a party with the executors in their suits in the State courts, she needs, is entitled to, and therefore seeks federal relief from a threatened taking of her property by taxing officials of New Jersey in violation of her constitutional rights. Though not a party, she certainly was privy to those proceedings and suits. They con-

cerned in part property which some day will be hers and with respect to which the executors presently hold title and have possession with rights to administer, including payment of lawful taxes. Her grievance against what she conceives to be threatened misconduct by New Jersey officials and her right to relief therefrom are no higher and no greater than, and indeed no different from the grievance and the right of the executors litigating for her benefit. [fol. 348] We cannot see how the legal circumstances of the case cast upon her a right to maintain this suit for preliminary injunction when they deny such a right to the executors with respect to the same property coming from the same source and involving the same questions of fact and law. A grant of her prayer for a preliminary injunction would be as plain a violation of Section 265 of the Judicial Code as a grant of the like prayer of the executors.

Holding that this court is without jurisdiction in the premises, the prayers of the bills for preliminary injunctions are denied and the cases set over for final hearing on motion of counsel.

Statements of fact and conclusions of law in the foregoing opinion shall be regarded as findings of fact and conclusions of law within Equity Rule 70½.

[fol. 349] In United States District Court, District of New Jersey

In Equity

No. 5092

Elinor Dorrance Hill, Plaintiff,

v.

J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey; William D. Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey; Frank J. Murray, Comptroller of the State of New Jersey; William H. Albright, State Treasurer of the State of New Jersey; and David T. Wilentz, Attorney General of the State of New Jersey, Defendants

Decree Denying Interlocutory Injunction—Filed June 4, 1935

And now, to wit, June 4, 1935, this cause came on to be heard at this term, and was argued by counsel, and upon

consideration thereof, it is ordered, adjudged and decreed as follows:

I. The prayer of the Bill of Complaint for interlocutory injunction be, and is hereby denied, for want of jurisdiction, to grant such interlocutory injunction.

Victor B. Woolley, Circuit Judge; J. Warren Davis, Circuit Judge; John Boyd Avis, District Judge.

[fol. 350] IN UNITED STATES DISTRICT COURT

In Equity

No. 5092

[Title omitted]

Petition for Appeal and Order Allowing Same—Filed June 4, 1935

PETITION FOR APPEAL

The above-named plaintiff, feeling aggrieved by the decree made and entered in the above entitled proceeding in equity on the 4th day of June, 1935, does hereby appeal from the said decree to the Supreme Court of the United States, for the reasons specified in the Assignments of Error filed herewith; and prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers, upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States under the rules of the said Court in such case made and provided.

And your petitioner further prays that the proper order relating to the security to be required of her be made.

Dated June 4, 1935.

Wm. A. Schnader, Solicitor for and of Counsel with the Plaintiff, 1719 Packard Building, Philadelphia, Pa.

[fols. 351 & 352] ORDER ALLOWING APPEAL

And now, to wit, June 4, 1935, the foregoing appeal to the Supreme Court of the United States is allowed upon

the giving by the above mentioned plaintiff of a bond, as required by law, in the sum of 250 dollars.

Victor B. Woolley, Circuit Judge; J. Warren Davis, Circuit Judge; John Boyd Avis, District Judge.

[fol. 353] IN UNITED STATES DISTRICT COURT

In Equity

No. 5092

[Title Omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed June 4, 1935

And now, to wit, June 4, 1935, comes the plaintiff in the above entitled proceeding in equity, appellant herein, and files the following Assignments of Error upon which she will rely in the prosecution of her appeal from the decree made by this Honorable Court on the 4th day of June, 1935, in the above entitled cause:

I

That the United States District Court for the District of New Jersey erred in denying the interlocutory injunction prayed for by the plaintiff.

[fols. 354-369]

II

That the United States District Court for the District of New Jersey erred in holding that it was without jurisdiction to grant the prayer of the Bill of Complaint for interlocutory injunction.

III

That the United States District Court for the District of New Jersey erred in entering the following decree:

"And now, to wit, June 4, 1935, this cause came on to be heard at this term, and was argued by counsel, and upon consideration thereof, it is ordered, adjudged and decreed as follows:

"I. The prayer of the Bill of Complaint for interlocutory injunction be, and is hereby denied for want of jurisdiction, to grant such interlocutory injunction."

Wherefore, the appellant prays that the aforesaid decree be reversed and that the case be remanded to the District Court of three Judges for final hearing upon the merits, and that the United States District Court for the District of New Jersey be ordered and directed to grant such further relief and in such form as the Supreme Court of the United States shall deem just.

Wm. A. Schnader, Solicitor for and of Counsel with Appellant, 1719 Packard Building, Philadelphia, Pa.

[fol. 370] IN UNITED STATES DISTRICT COURT

In Equity

No. 5092

[Title omitted]

PRÆCIPE FOR RECORD—Filed June 16, 1935

To the Clerk:

Please incorporate the following portions of the record of said District Court into the transcript:

Docket Entries.
Amended Bill of Complaint and Exhibit attached thereto.
Injunction Affidavit of Charlotte Dorrance Wright.
Injunction Affidavit of George Morris Dorrance, M. D.
Supplemental Affidavit of George Morris Dorrance, M. D.
Motion for Interlocutory Injunction.
Restraining Order.
[fol. 371] Bond on Restraining Order.
Answer and Exhibits attached thereto.
Amendment to Answer.
Answering Affidavit of William D. Kelly and Exhibits attached thereto.
Reply affidavit of Gertrude Britton and Exhibit attached thereto.
Reply Affidavit of Ethel M. Dorrance.
Reply Affidavit of William H. Donnelly.

Reply Affidavit of Ethel Dorrance Colket.
Reply Affidavit of Elinor Dorrance Hill.
Reply Affidavit of Charles G. Hacker.
Opinion.
Final Decree.
Petition for Appeal and Order allowing same.
Statement as to Jurisdiction of the Supreme Court of the United States.
Assignment of Errors and Prayer for Reversal.
Citation.
Acceptance of Service.
Motion for Preliminary Injunction Pending Determination of Appeal by Supreme Court of the United States.
Order Granting Temporary Injunction.
Bond for Injunction.
Bond on Appeal.
Appellee's Statement in Answer to Appellants' Statement as to Jurisdiction.
Præcipe for Record.
Clerk's Certificate.

Wm. A. Schnader, Solicitor for and of Counsel with Plaintiff, 1719 Packard Building, Philadelphia, Pa.

[fol. 372] IN UNITED STATES DISTRICT COURT

In Equity

No. 5092

[Title Omitted]

DEFENDANTS' PRÆCIPE—Filed June 25, 1935

To the Clerk:

Please incorporate into the transcript the following portions of the record of the District Court, in addition to those enumerated in the Plaintiff's Præcipe:

Exhibits 1a, 1b, 1c, 1d, 2 and 3, filed with Defendants' Answering Affidavit.
Defendants' Præcipe.

David T. Wilentz, Solicitor for Defendants, State House, Trenton, New Jersey. Duane E. Minard, Counsel.

Service of the above Præcipe is acknowledged this 21st day of June, 1935.

Wm. A. Schnader, Solicitor for Plaintiffs.

[fol. 373] IN UNITED STATES DISTRICT COURT

In Equity

No. 5092

[Title Omitted]

PLAINTIFF'S OBJECTION TO THE INCORPORATION IN THE RECORD OF THE MATTERS SPECIFIED IN DEFENDANTS' PRÆCIPE—Filed June 27, 1935

To the Honorable the Judges of the Above Court, Specially Convened in the Above Case:

The plaintiff objects to the inclusion in the record on appeal of the exhibits specified in Defendants' Præcipe, and in support of her objection respectfully represents:

[fol. 374] 1. That Exhibits 1a, 1b, 1c, and 1d are copies of the records in the Dorrance Estate tax litigation in the States of Pennsylvania and New Jersey, and Exhibit 3 is a so-called "Abstract of Record", prepared by the Attorney General of New Jersey, setting forth, from his standpoint, the salient points in the said records.

2. That Exhibit 2 is the record in the New Jersey proceedings.

3. That reference to said exhibits was made by William D. Kelly in his "Answering Affidavit" in opposition to the plaintiff's motion for interlocutory injunction, but said William D. Kelly did not swear in his affidavit to the truthfulness of anything contained in Exhibits 1a, 1b, 1c, 1d or 3.

4. That it is unnecessary to incorporate in the record on appeal the text of the New Jersey statutes which are pertinent to a consideration of the appeal.

5. That the court in denying plaintiff's motion for interlocutory injunction did not pass on the merits of the con-

troversy but rested its decision and decree solely on its belief that it lacked jurisdiction to issue the injunction.

[fol. 375] 6. That Exhibits 1a, 1b, 1c, 1d, and 2 and 3 are wholly unnecessary to a consideration of the questions arising on plaintiff's appeal.

Respectfully submitted, Wm. A. Schnader, Solicitor for Plaintiff.

[fol. 376] IN UNITED STATES DISTRICT COURT

No. E-5092

[Title Omitted]

ORDER AS TO RECORD—Filed June 27, 1935

Plaintiff's Objections to the incorporation in the record of the matter specified in Defendant's Præcipe having been this day filed and William A. Schnader, Solicitor for Plaintiff, appearing in support of the objection and Duane E. Minard, counsel for defendants, appearing contro, on argument of counsel having been heard and the matter considered, it is on this 27th day of June, 1935,

Ordered that the record in this case to be certified by the Clerk on appeal to the Supreme Court of the United States as specified in Defendant's Præcipe be limited to the following parts thereof:

Exhibit 1a—Testimony of George Morris Dorrance, M. D., pages 63a to 129a, inclusive; Arthur C. Dorrance, pages 129a to 169a, inclusive; William D. Lippincott, pages 174a to 230a, inclusive, 408a to 417a, inclusive; Ethel M. Dorrance, pages 250a to 338a, inclusive.

Exhibit 1b—Testimony of William D. Lippincott, pages 614a to 633a, inclusive.

Exhibit 3—Pages 1 to 29, inclusive; 142 to 158, inclusive. Defendant's Præcipe.

J. Warren Davis, Circuit Judge.

[fol. 377] EXHIBIT 1-A

Portions of Testimony before Orphans' Court of Delaware County, Pennsylvania, in an action by Commonwealth of

Pennsylvania against Executors of the Dorrance Estate to collect Transfer Inheritance Tax, submitted as Exhibits by Appellees, and incorporated in this Record by order of the Court above.

Exhibit 1a

Testimony of George Morris Dorrance, M. D., pages 63a to 129a, inclusive.

Testimony of Arthur C. Dorrance, pages 129a to 169a, inclusive.

[fol. 378] Dr. George M. Dorrance, sworn.

By Mr. Hannum:

Q. Where do you live, Dr. Dorrance?
A. 2218 Delancy Street, Philadelphia.
Q. You are a practicing physician?
A. And surgeon.
Q. Among other things, a surgeon?
A. Yes.
Q. A graduate of what institution?
A. University of Pennsylvania.
Q. What year?
A. 1900.
Q. What is your relation, if any, to the decedent here, Dr. John T. Dorrance?
A. Brother.
Q. Are you older or younger than he was?
A. 3½ years younger.
Q. Where was your brother born?
A. So far as I know Bristol, Pennsylvania. I was told that.
[fol. 379] Q. That is where your family—your father and mother lived?
A. Yes. And that is where I was born.
Q. That is where you were born? Mr. Gray asks for the date of your brother's birth?
A. He was supposed to be born in 1873—3½ years younger, I am. I was born in 1877.

The Court: Do you know the date of the month?

A. The exact date I don't know. I think it was November 11. I have been reminded of that.

By Mr. Hannum:

Q. November 11, 1873, is that right?

A. I calculate 3½ years younger, I am. I think that is correct. I was born April 24, 1877. So I calculate back that way.

Q. Did you and your brother grow up as boys together?

A. Yes, and slept together.

Q. Where did your brother, Dr. Dorrance, receive his education?

Mr. Gray: I object to that as totally immaterial and irrelevant.

Mr. Hannum: It is purely historical.

The Court: I will hear it. Grant you an exception.

(Bill sealed for the Commonwealth.)

A. The Massachusetts Institute of Technology, graduated there; and then went to Gottinger, Germany and received his Doctor's degree.

[fol. 380] By Mr. Hannum:

Q. Do you recall when he returned from Germany, how old he was at that time?

A. He must have been twenty-one when he graduated from "Tech" and eighteen months in Germany, he must have been about—I think he then traveled a month or two before he returned, he must have been twenty three when he returned here.

Q. When did he go to work or employment upon his return from Germany?

A. He went to Camden, New Jersey; then to the Camden Preserving Company in which my uncle then had a substantial interest. I might say he had intended to go——

Mr. Gray: That answers the question.

Mr. Hannum:

Q. You started to say that he intended to do something, what was that?

The Court: What did he do? Unless he intended to establish a residence somewhere.

Mr. Hannum: I am coming to that.

Q. He went to work for the Campbell Soup Company in which your uncle was then interested?

A. Yes.

Q. What uncle was that?

A. My uncle, Arthur Dorrance.

Q. When he went to work at the Campbell Soup Company, where did he go to live?

A. On Linden Street, Camden, at the residence of Miss [fol. 381] Mary Bergen. He lived there and boarded with other men for a certain length of time. I forget the exact time. I have no way of knowing it. Then he moved to the Robeson Apartments.

Q. Is Miss Mary Bergen an aunt of Martin Bergen?

A. Yes.

Q. He lived there how long, boarding with Miss Bergen in Camden?

A. Must have been several years, I think, to 1905, somewhere there, and then he moved to the Robeson Apartments.

Q. He went there why?

Mr. Gray: That is objected to. He can't tell another man's reasons in performing an act.

The Court: Unless Mr. Dorrance told him, how can this man tell you.

By Mr. Hannum:

Q. Did he tell you?

A. He did.

Mr. Gray: I object to the question even though Mr. Dorrance told him. It is hearsay and has nothing to do with this case.

The Court: Objection overruled.

Mr. Gray: Grant me an exception.

The Court: Yes. You get an exception every time. The Act of Assembly required it. You get it.

(Bill sealed for the Commonwealth.)

[fol. 382] Mr. Hannum:

Q. Answer the question?

A. Because Miss Bergen, I think, she was closing up that house, and he then moved to the Robeson Apartment.

Q. Where was the Robeson Apartment?

A. Camden, New Jersey.

Q. How long did he live in the Robeson Apartment, if you know?

A. He lived there until the end of 1907. At the end of 1907 I was over there——

Q. Just before we come to that. He lived there until the end of 1907?

A. Yes.

Q. When was he married, if you know?

A. 1906.

Q. Do you know whether or not he and his wife lived at the Robeson Apartments after they were married?

A. They did.

By the Court:

Q. Where was he married?

A. In Baltimore.

By Mr. Hannum:

Q. That is Baltimore, Maryland?

A. Yes.

Q. Was or was not that the residence of his wife, Baltimore, Maryland?

A. Yes, it was.

Q. I understand you to say that after he was married [fol. 383] he continued to live at the Robeson Apartments until when?

A. The last of 1907.

Q. What happened then?

Mr. Gray: That is objected to. Unless he states that he knows of his own knowledge, I object to it.

The Court: If he got it from Dorrance that would be evidence.

Mr. Gray: I don't believe so.

The Court: Objection overruled. Exception granted.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. Will you answer the question?

A. I was over at the Robeson Apartments and he said "Can you take me in?"

Q. What reason did he give for making that inquiry?

A. His governess at that time wasn't allowed to come in a certain room to have her dinner and he said it was too cold out there for any woman to eat where she was and if he couldn't get his governess where it was warm he would leave. And then he moved. I said I could take him in and he moved over with me at 1716 Locust Street.

Q. That is in Philadelphia?

A. In Philadelphia.

Q. Was that a temporary or a permanent arrangement? How long did he reside with you?

[fol. 384] The Court: Surely that isn't proper, it is leading.

Mr. Hannum: Was it temporary or permanent?

Mr. Gray: I make an objection.

By the Court:

Q. How long did he stay with you?

Mr. Gray: To that I have no objection.

A. He stayed in the winter up until he moved out to Cinnaminson in 1911. It was my home at that time.

Q. You made, your home was in Philadelphia?

A. Yes. That is my home.

Q. He stayed at your home until he moved to Cinnaminson?

A. Yes. I might say that he had a home also, or residence in Camden, at the same time.

Mr. Gray: I ask that that be stricken out.

The Court: Strike that out.

Mr. Gray: Don't volunteer anything, please.

By Mr. Hannum:

Q. Did he live with you all the year around while he was there?

A. No sir.

Q. For what part of the year did he reside with you?

A. He came somewhere around the first of October and left about the first of June. I couldn't give you the exact dates. The rest of the time his family lived at Atlantic City at a hotel there—Brighton.

[fol. 385] Q. At that time did he say anything to you about a home in New Jersey?

Mr. Gray: That is objected to: in the first place because it is leading. In the second place, whatever he may have said relative to his home in New Jersey is not properly admissible evidence.

The Court: I don't agree with the latter. But I think the first is good—that it is leading.

By the Court:

Q. What did he say in regard to leaving your place to go to New Jersey?

Mr. Gray: Grant me an exception.

The Court: Yes, go ahead.

(Bill sealed for the Commonwealth.)

A. He said he was going over to New Jersey so that he could be close to his place over there; that he thought he ought to know more about growing tomatoes and such things and was going to establish an experimental farm out there because he could increase the solids in tomatoes two per cent, which would be a great deal of benefit to the canning industry.

The Court:

Q. Then he moved and went to where?

A. Cinnaminson.

Q. When he was at your place, did he board with you?

A. Yes. He boarded with me and paid me so much per month, food and everything included.

[fol. 386] By Mr. Hannum:

Q. Did he vote in Pennsylvania while he lived with you?

Mr. Gray: That is objected to. It is totally immaterial.

The Court: It certainly is objectionable, unless this man has told him when he voted.

Mr. Gray: The question whether he voted or not is totally immaterial.

The Court: I don't know about that. Your objection is sustained. Exception granted.

(Bill sealed for the Executors.)

By Mr. Hannum:

Q. Where did you say that he went to live and when?
A. In Cinnaminson, Burlington County, New Jersey, in 1911.
Q. Is that the same place at which he died?
A. Yes.
Q. Were you present when Dr. Dorrance died?
A. I was.

The Court:

Q. Where did he die?
A. Cinnaminson, New Jersey, on the Pomona farm.
Q. His own house?
A. Yes.

[fol. 387] By Mr. Hannum:

Q. You say that he moved to Cinnaminson in 1911?
A. Yes.
Q. How long did he live there?
A. Until he died.
Q. And that was September 21, 1930?
A. Yes.
Q. Did you occupy any position with the Campbell Soup Co.?
A. Chairman of the Board.
Q. And have been for how long?
Q. Since his death.
Q. And prior to that were you familiar——
A. Vice-President from 1915 on.
Q. From 1915 on?
A. Yes.
Q. Will you kindly state what part your brother took in the active management of the Campbell Soup Company?

Mr. Gray: That is objected to as totally immaterial and irrelevant. He may have a residence or domicile one place and his business another.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He had to do with everything of the whole plant. Anybody who was there, they would have seen that themselves.

Q. Tell us what he did?

A. He had meetings with different members of the staff daily. If any one was at the plant, he would see them.

[fol. 388] Q. How about the running of the business? What official capacity did he have?

A. He was President and main spark of the whole thing.

Q. He was President of the Corporation?

A. Yes.

Q. What did he do in the management and running of that plant?

A. He was on all committees. Nothing was decided without his approval.

Q. How often was he there? When he was in America?

A. Every day that he could get there. That is where he always went to.

Q. What did his activity consist of in the management of the plant, and the production in connection with it?

Mr. Gray: Will you permit my objection and your Honor's ruling to go to this whole line of questions with respect to the conduct of the business by the decedent. If so, sir, it won't be necessary to interpose a separate objection to each question.

The Court: I will give you an exception—overrule your objection and give you an exception. As to the conduct of the business you needn't object any more. Let one objection cover it all.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. Will you answer the question?

A. There was nothing important decided in that business without him knowing about it. He was there earlier and [fol. 389] stayed later than most anybody else working in the business. The materials—nothing could be changed anything, in quality or in products without his O.K. on it. I can only say there was hardly a minute detail of that business that he didn't look into. And his interest was very thorough*t*. Even in the care of the horses, he was interested in. The farms, all those had to be returned or reported to him in a certain committee. Even so much so, the experimental development of what tomatoes to be planted, had to all come under him because he was interested in every detail of the industry.

Q. Are you able to state what the size of the business was when he took hold of it, and what it grew to in the State of New Jersey under his management and control up to the time of his death?

A. I couldn't give you those official figures without looking them up. But there are facts. It was a very small canning—general canning industry and it finally developed into principally the Soup Industry.

Q. Do you recall the incorporation of the Campbell Soup Co.?

A. Yes, very well.

Q. Are you able to say whether it is a corporation of the State of New Jersey?

A. We are a corporation of the State of New Jersey.

Q. Do you recall when your brother purchased this so-called residence at Woodcrest?

A. Yes.

Q. When was that?

A. I think 1925, as near as I can remember.

Q. Where was that residence, where was that place?

[fol. 390] A. At Radnor.

Q. When he purchased it, did you have any conversation with him regarding it and if so, what did he say regarding it?

Mr. Gray: If the Court please, I object to that. Now, at any time that your Honor cares to hear me on the legal proposition involved in the question of his intention, I shall be very glad to present my argument. That is a declaration of intention.

The Court: They certainly must be evidence under all the cases that I have read.

Mr. Gray: They may be under certain circumstances.

The Court: I overrule the objection and give you an exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. Read the question. (Question read.)

A. Did I have any conversation with him on that score?

The Court:

Q. At the time that he purchased, did you have any conversation as to his purchasing it?

A. Prior to the purchase, at the purchase and after the purchase.

Q. What were they?

A. That he was—I said to him: "Are you going to move out to there?" "No, I am going——"

[fol. 391] Mr Gray: There is another question pending. I object to the question.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. "Are you going to move out in Pennsylvania?" "No," he said, "my home is in New Jersey. I am purchasing this home for my wife and kiddies. I want to be over in New Jersey. It is a long trail out there, running out there and back every day; do you think I will stand it?"

By Mr. Hannum:

Q. In that connection, were you his physician?

A. I was his brother-physician, yes. He said, however, to that: "I am going out and take that place. I know it is not good for me, but I will be over here a good deal of the time and I will have my home out here". Then I said: "This will not involve any change of your residence?" He said: "No". I said: "Alright, then from a business standpoint I am satisfied. If you want to go out in a social way, that is your affair."

By Mr. Hannum:

Q. Is your mother living, Dr. Dorrance?

A. No, sir.

Q. When did she die?

A. January 9, 1929.

Q. Was she sick for sometime before her death?

A. Yes.

Mr. Gray.: I am assuming that he has personal knowledge of these questions.

[fol. 392] Mr. Hannum: Yes.

A. I was there when she died.

By Mr. Hannum:

Q. How long did you say she was sick before she died?

A. About four years. She was a gradually decreasing old lady.

Q. Was she taken to Dr. John T. Dorrance's home before her death. That is yes, or no?

A. Yes.

Q. And where was she taken?

A. To Cinnaminson.

Mr Gray: Wait a minute: When he put the question: Was she taken to Dr. Dorrance's home before her death, if he meant to develop the fact that was his home—I had no way of telling when he put the question whether he meant Woodcrest or Cinnaminson.

The Court: He said Cinnaminson.

Mr. Gray: Was he taken to Cinnaminson, I have no objection. It is the conclusion that is to be drawn from the suggestion that she was taken to his home that I object to.

Mr. Hannum: That is a matter for you in hearing the testimony. I think my inquiry is entirely proper, and where she was taken whether that was his home or domicile is a matter for the Court.

The Court: Go ahead.

[fol. 393] By Mr. Hannum:

Q. How long was she there before she died?

A. I presume two years.

Q. Where had she been residing—I am speaking of your mother—before she became or was taken to Dr. Dorrance's home at Cinnaminson?

A. My sister's home in California, San Diego.

Q. That is which sister?

A. Winifred Dudley, Mrs. Roy Dudley.

Q. Was your sister, Mrs. Hood, at any time ill?

A. Yes.

Q. Where was she taken before her death, before she died?

A. Pomona Farms.

Q. When was she taken there?

A. I have had some difficulty in finding the exact date of that. I think it was in the fall of 1925.

Q. How long did she stay at your brother's home before her death?

A. Until she died.

Mr. Gray: I object to the characterization of this place as the brother's home.

The Court: It doesn't necessarily make it his home even though he calls it his home.

Mr. Gray: I object to the question.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. I think she died June 16, 1928. She was buried from there.

[fol. 394] By Mr. Hannum:

Q. Did she die there?

The Court: He said that she died there and was buried from there.

By Mr. Hannum:

Q. Did you have any conversation with your brother regarding his mother and sister coming there while they were ill?

Mr. Gray: That is objected to as totally immaterial and irrelevant. That even doesn't come within your Honor's ruling as to declaration of intention with respect to residence.

The Court: It may be a general conversation; that wouldn't be evidence.

Mr. Hannum: About his mother and sister coming to Cinnaminson, while they were ill. In other words, I don't want to suggest what the conversation may have been, if there was any conversation.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He said that he would—when I asked him if my mother and sister could come there, he said "I will have to see Ethel and talk it over with her and see if it would be satisfactory."

The Court:

Q. What was it he said?

A. "I will have to talk to Ethel"—that is his wife—"to

[fol. 395] see if it would be alright for them to come to my home."

Q. He said that, did he?

A. Yes. And some time later——

Mr. Gray: That answers the question. Please don't volunteer.

The Court: Let him finish the thing up.

Mr. Gray: He is talking about some time later.

A. It is the same thing. Two or three days later he said it was perfectly satisfactory for them to come there; Ethel would run the house just the same as she has always run it and it would be perfectly alright providing that his room and one other room was always there so that he could come at any time.

By Mr. Hannum:

Q. Do you know of your own knowledge with what other corporations, if any, was your brother connected, than the Campbell Soup Company?

Mr. Gray: That is objected to as totally immaterial and irrelevant.

By Mr. Hannum

Q. Was he at any time prior to his death in any way associated with the Pennsylvania Railroad Company?

Mr. Gray: That is objected to as totally immaterial and irrelevant, whether he was or not.

The Court: I can't decide that it isn't relevant. I don't [fol. 396] know what it may be. I will hear it and if it is not followed up I will exclude it. I can't tell now whether it is relevant or not. Your objection is overruled. Exception.

(Bill sealed for the Commonwealth)

A. He was a director of the Pennsylvania Railroad.

Mr. Gray: I move that be stricken out. It is nothing to do with the question of his residence.

The Court: I don't know. I will overrule your objection and give you an exception.

(Bill sealed for the Commonwealth)

A. A director of the Girard Trust Company.

By Mr. Hannum:

Q. Did he at any time prior to that time that he became a director of the Pennsylvania Railroad Company talk to you about whether he would or would not become a director of the Pennsylvania Railroad?

Mr. Gray: That is objected to.
The Court: Objection overruled. Exception.

A. I went to him——

Mr. Hannum:

Q. Answer that question whether he did or did not talk to you?
A. Yes, he did.
Q. Now then, the next question is: What did he say on that subject?

[fol. 397] Mr. Gray: That is objected to.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. I went to him and said: "Jack, does that mean—

Mr. Hannum:

Q. What mean?
A. Accepting this directorship of the Pennsylvania Railroad—that was before he was appointed—does that mean you have to be a resident of the State of Pennsylvania?" He said: "No; or I should refuse to accept it; and I have been told that there were other men who have been directors of the Pennsylvania Railroad who were not residents of Pennsylvania and they have assured me that it is not necessary and I can remain and I am going to remain a citizen of New Jersey. Otherwise, I will not accept a directorship in the Pennsylvania Railroad."
Q. When was that?
A. I couldn't quite tell you that. I haven't looked that up. I am not sure about it.
Q. Was it before or after the purchase of the property at Radnor, which property was in the name of him and his wife?

A. I don't know, sir, I am not sure of that date. So I wouldn't want to swear to it.

The Court:

Q. It was before he became a director?
A. Yes. It was before he became a director. Yes.

[fol. 398] By Mr. Hannum:

Q. Was that talk that you had with him about the time that he became a director of the Pennsylvania Railroad?
A. That was before he became a director of the Pennsylvania Railroad.
Q. I understand it was before. But was it about the time?
A. Yes. He accepted it after they assured him it wasn't necessary to be a resident of the State of Pennsylvania; that he could still be a resident of the State of New Jersey.
Q. It has been stated that the Radnor property was purchased in 1925?
A. Yes.
Q. After 1925, did you go to Cinnaminson, the house at Cinnaminson. Did you go there?
A. Yes.
Q. How frequently were you there between 1925 and 1930?
A. Very often. Possibly may be twice a week; may be once in two weeks. I couldn't say. I was there very often. Any time I was over there, I stopped in and had dinner.
Q. Was your brother, Dr. Dorrance, there on those occasions?
A. Sometimes he would be there; sometimes he wouldn't. I never knew. I often would go there and have dinner with him and stay all night with him.
Q. How frequently did that occur, over that period, Dr. Dorrance?
A. Quite a number of times. I just couldn't say how many. I suppose, thirty five, forty, fifty sometimes sixty. [fol. 399] I haven't any way of just recollecting those things. I didn't put the things down.
Q. When you went there, was the house open or closed?
A. I have never seen it closed since they moved in.
Q. Was or was it not furnished and liveable and were there servants there?

Mr. Gray: That is objected to until the date is fixed with reference to which counsel is putting the question.

By Mr. Hannum:

Q. All the days upon which you did go there, either alone or with Dr. Dorrance, between 1925 and 1930, the date of his death?

Mr. Gray: I will have no objection if the witness will state that it was in the same condition on each of the occasions. Then of course there need not be any distinction between one and another. Unless he will say that it is the same, I will object to it until the date is fixed.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. It is the same as it was when he was there before he moved, the furniture was there, the same plates, the same dishes, the same linen, the same beds.

Mr. Hannum:

Q. The same in every part?

A. Yes. One of the beds very hard.

Q. Was or was not Mrs. Dorrance, your brother's wife, there on most of those occasions?

[fol. 400] A. I wouldn't say. I couldn't say on most of them. She was there on some of them. She was there frequently when I was there.

Q. With Dr Dorrance?

A. With Dr. Dorrance; sometimes without Dr. Dorrance.

Q. Were the children and other members of the family there on some of those visits; some of the times that you were there?

A. Sometimes the children were in there alone without anybody; sometimes they were there with Mrs. Dorrance and my brother there as well—all being there sometimes.

Q. Then you stated that you were at your brother's death at this home in Cinnaminson?

A. Yes.

Q. How long had he been there prior to his death, if you know?

A. About seven days.

Mr. Gray: Do you know of your own knowledge.

A. Yes.

By Mr. Hannum:

Q. Are you able to state of your own knowledge where he had come from to Cinnaminson previously to the seven or eight days before his death. Where he had come from?

A. Yes. I left him at Bar Harbor.

Q. What, if anything, did he say to you when you left him?

Mr. Gray: That is objected to.

[fol. 401] By Mr. Hannum:

Q. Relative to his home at Cinnaminson?

Mr. Gray: That is objected to.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. What if anything did he say?

A. He said: "I will see you at my home."

The Court:

Q. What?

A. I will see you at my home when I come down.

By Mr. Hannum:

Q. Where did you go to see him?

A. Cinnaminson, New Jersey.

The Court:

Q. Did he tell you where to go to see him?

A. No, sir. He just said: "I will see you at my home."

Q. You went to Cinnaminson?

A. Yes.

By Mr. Hannum:

Q. Did you find Mr. Dorrance there?

A. Yes, on the porch.

[fol. 402] By the Court:

Q. On the porch?
A. Yes. On the porch, I drove up.

By Mr. Hannum:

Q. Was he ill at Bar Harbor when you had that conversation that you have just detailed?
A. Yes. I didn't expect he was going to die.
Q. I didn't ask you that. I asked you if he was ill?
A. Yes.
Q. Was or was not that the reason that he was coming home to Cinnaminson, his illness?

Mr. Gray: That is objected to. It calls for a conclusion.

A. I don't understand.

By Mr. Hannum:

Q. Was he ill at Bar Harbor?
A. Yes.
Q. And was that the reason that he was coming home to Cinnaminson, his illness, when he said to you: "I will see you at home at Cinnaminson?"

Mr. Gray: He didn't say that. The question is therefore an improper quoting of the testimony.
The Court: He said "I will see you at my home."
Mr. Gray: That is objected to, because it asks a witness to give his conclusion.
Mr. Hannum: I asked him if he was ill.
[fol. 403] The Court: The objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He said the season was over and he was coming down and was coming right down to his home. The season was over at Bar Harbor. It was too cold up there.
Q. Was your brother, if you know, of your own knowledge, connected with any church?

Mr. Gray That is objected to as immaterial and irrelevant.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He was a member of a church at Riverton, New Jersey—the Episcopal Church. He was warden of that church.

Q. If you know, is that Christ Church, Riverton, New Jersey?

A. Yes.

Q. Do you happen to know of your own knowledge when he became warden?

A. It must have been—I couldn't just tell you the exact date. It was quite sometime. I remember the time that a donation came up. The reason I know about it: They asked him to buy—they wanted to get some coal and he said "No, I won't give you any coal, you have a fight in the vestry." Before he went out he said: "If you don't tell anybody——"

The Court: Never mind, that isn't evidence.

Mr. Gray: That is objected to.

[fol. 404] A. The reason; I am fixing the time.

The Court: He is guessing about it.

By Mr. Hannum:

Q. Was he warden of that same church at the time of his death, if you know?

A. Yes.

Q. If you know of your own knowledge, what was Dr. Dorrance's stock holdings in the Campbell Soup Company at the time of his death?

A. All except a certain number of shares that the directors had; all the rest he owned and had.

Q. He owned the entire—all the stock in the company. How long had he owned that before his death, if you know?

A. From the time I became vice president, 1915, June 3rd.

Q. From 1915 on until the time of his death?

A. Yes.

Q. The certain number of shares that you spoke of were qualifying shares that were given by him to the directors to qualify.

A. Yes, that is correct.

Q. But he owned one hundred per cent of the stock of the company?

A. Yes.

Mr. Hannum: Cross-examine.

Cross-examination.

By Mr. Gray:

Q. Do you know what date in 1906 Mr. Dorrance and his wife, the present widow, were married?

[fol. 405] A. Not of my own knowledge; no, sir. I haven't that with me.

Q. You have given a great deal of information gleaned from other sources. Do you know from other sources when they were married?

A. Not the exact date. The exact date, no.

Q. The fall was it, of 1906?

A. It was in the fall, I think.

Q. When did Mr. Dorrance and his wife come to live with you in Philadelphia?

A. That was the first of the year 1908.

Q. First of the year, 1908?

A. Yes.

Q. I am reminded, you told us before it was 1907, which is correct?

A. I said it was the last of 1907. He left Cinnaminson—Camden, the last day of the year and come over to me on the first.

Q. Why did you say Cinnaminson, because you have that in your mind all the time?

Mr. Hannum: Just a minute.

The Court: You have his answer. Go on.

By Mr. Gray:

Q. Why did he say Cinnaminson—because you got that prominently in your mind?

A. No, sir, Mr. Gray.

Q. He came to live with you in the first part of 1908. Of what did your household then consist in Philadelphia?

A. It consisted of myself, because my sister had just gotten married.

[fol. 406] Q. What did it consist of?

A. Regular residence in Philadelphia.

Q. Who lived there?

A. I did.

Q. Nobody but you?

A. No, sir. Not at that time.

Q. Did you have servants there?

A. Yes.

Q. Before they came to live with you?

A. Yes. Someone for years.

Q. How big a house was it?

A. It is 1716 Locust Street. It may be about ten or twelve roomed house, I suppose.

Q. What part did you rent to them?

A. Well, they had—I wouldn't call it renting exactly, Mr. Gray. We lived together. I invited them to come in and live with me.

Q. As what we call paying guests?

Mr. Hannum: It isn't necessary to characterize it in any unpleasant way.

Mr. Gray: That is not characterizing them in any unpleasant way.

A. They just came. We never called it "paying guests". I ran the house. He said to me: "How much will it cost?" I said: "I don't know." I said: "What it costs me while you are here—if I can put it that way—I will charge you."

Q. He ran the house?

A. No, sir. I ran the house.

Q. What did you charge?

A. I don't have the figures.

Q. He paid a stipulated sum per month?

[fol. 407] A. Yes.

Q. What was the amount per month?

A. I don't know. I don't know that I have the record now.

Q. Your memory can go back to conversations prior to that time, yet you can't tell me the amount per month that your brother paid you when he moved in in 1907, is that correct?

A. I couldn't tell you the dollars and cents. No, sir.

Q. You have no idea?

The Court: What difference does it make? He said that he lived there. What is the use of taking time with trifling questions?

Mr. Gray: I think not. My friend goes to the question of his living there in 1907 and endeavored to establish that it was a temporary living. I am going to establish the

fact that it was not a temporary living, if I can; but that Dr. Dorrance himself was in charge of running the house.

The Court: Go ahead.

Mr. Gray:

Q. You have no idea of what he paid you?

A. No, sir.

Q. Now he lived with you from 1907 until 1911, is that correct?

Mr. Hannum: I object. He said, 1908.

Mr. Gray: You are perfectly right.

Q. From 1908 until 1911, is that right?

[fol. 408] A. Yes.

Q. What time in 1911?

A. I think that was the first of April. I can't fix it. I thing it is the first. It must have been, because that is when the lease ended, because I left there then because he was moving. I had made other arrangements to go over and live with McCarthy at that time.

Q. That is 2022 Walnut Street with Dr. McCarthy?

A. Yes, I went there. I had arranged to come there.

Q. After he bought the property, your brother bought the property in Cinnaminson, New Jersey, is that correct?

A. He either bought it or it belonged to the Campbell Soup Company. It is my recollection that he rented that from the Campbell Soup Company in Cinnaminson.

Q. When in 1911?

A. It is my recollection that he either bought it or rented it from the Campbell Soup Company.

Q. Do you know whether he ever bought it or not?

A. I am not sure of that fact. Later I think he rented it——

Q. Do you know whether he ever bought it?

A. I am not sure about that fact.

Q. You don't know at that time whether the title was taken either by your brother or your brother's wife?

A. No, sir.

Q. Now, am I correct in suggesting that between 1911 and 1925 you visited your brother and his wife at Cinnaminson?

A. Yes.

[fol. 409] Q. That is at the place that you referred to as Pomona farms?

A. Yes.

Q. And that is in Burlington County?

A. Yes.

Q. By the way, those farms were farms that were used by the Campbell Soup Company for the purpose of growing vegetables, isn't that correct?

A. Experimental farms, principally. You asked me that, what they were for.

Q. Alright, they were experimental farms?

A. Yes.

Q. These Pomona farms, the place where your brother lived from 1911 until 1925 was an experimental farm of the Campbell Soup Company?

A. Yes. A certain part of that was not taken care of by the farmers of the farms. That other part was taken care of by his people.

Q. You would recognize a picture of the place, if you saw it, of course?

A. I certainly would.

Q. I show you a picture of photograph which I will ask the stenographer to mark as Commonwealth's Exhibit "A" or "1" (Photograph marked Commonwealth's Ex. 1), and ask you if that is a picture of the house at Pomona farms, Cinnaminson, New Jersey?

Mr. Hannum: I object. The picture isn't in evidence.

The Court: He is going to show it to him. He hasn't offered it in evidence. He can show him the picture. Let him see it. Let the witness answer.

(Bill sealed for the Executors.)

[fol. 410] A. It looks exactly like it.

By Mr. Gray:

Q. Is it?

A. Without there is another one similar to this one, it is, yes.

Q. You didn't see it often enough to be able to tell it from the photograph?

A. That is—this looks exactly like it.

Q. Is that a picture of it?

A. This picture looks exactly like the place out there.

The Court: That is certainly an answer. It looks like it.

By Mr. Gray:

Q. I show you what purports to be a picture taken from the air, of Pomona farms, Cinnaminson, New Jersey, and ask you whether or not that is an accurate picture of the plot of grounds together with the house and such other buildings as may be on it at Pomona farms, Cinnaminson, New Jersey.

Mr. Hannum: I have the same objection.
The Court: Objection overruled.

(Bill sealed for the Executors.)

A. Well, Mr. Gray, if I may answer the question——

By Mr. Gray:

Q. That is what I want you to do.

[fol. 411] The Court: Just answer what you know about it.

A. May I have the question?

By Mr. Gray:

Q. Is that a picture of the grounds and buildings thereon at Pomona farms, Cinnaminson, New Jersey, from the air? Of course, I am not binding you to where the limits of the farm are, or anything of that kind.

Mr. Hannum: That was taken from an airplane.
Mr. Gray: Yes.

A. I don't just exactly. I couldn't say. It isn't all the farm, I am sure of that.

By Mr. Gray:

Q. Let me suggest to you that the house is in here where you see it coming through the trees.

The Court: How is he to tell if it is the picture if he can't see the house. It is your suggestion.
Mr. Gray: He can see it.

A. Is this the Lippincott farm down there?
Q. If you can't answer the question, I will have to state that I don't know whether that is Lippincott's farm or not.
A. That looks like, to me, what the Lippincott farm would be like from up above.

Q. What I want to know. Does that look like the Pomona farm from the air?

[fol. 412] A. I don't see the house. That is—I get it now. That is our stables.

Mr. Hannum: Have you any pictures from the ground?

A. For the farm business. That is the experimental station, and these are the experimental greenhouses.

By Mr. Gray:

Q. That is a picture then of Pomona farms?

A. Yes, I guess it is. May be I had—that is not all the farms. This is just one farm. This is farm No. 1. We have farm No. 2 across the road. It isn't connected with that farm No. 2.

Q. This is the farm on which the house contained in the picture Exhibit 1 is located?

A. That is where Pomona farms of Mr. Dorrance's place is a portion of that, right off that. The rest of it is farm No. 1. That is not Pomona farm. Farm No. 1 is technically known to us as farm No. 1. The residence part which he had I suppose would be Pomona farms. But the rest is farm No. 1.

Q. Then you are sure that the picture Exhibit 2 is the farm on which this building which is in Exhibit 1 is located, is that correct?

A. Yes.

Q. After 1925, when did you first visit Cinnaminson?

A. I couldn't tell you, Mr. Gray. I suppose possibly a month or six weeks after. I made frequent visits out there for very many and various reasons. I was a member of the firm.

Q. You went frequently to Cinnaminson because of the [fol. 413] experimental farm station that belonged to the Campbell Soup Company, that is correct?

A. No, sir.

Q. Then you never went to Cinnaminson because of the experimental station that belonged to the Campbell Soup Company out there?

A. No, sir.

Q. Did they have an experimental farm out there?

A. They had them and a man in charge of them.

Q. You never visited them?

A. I had visited them but I had no official business there.

Q. I am not talking of official business?

A. If I did, I did just for general—nothing reported me.

Q. You went there sometimes to look at the experimental farms?

A. Not officially. I might have gone there; not for that purpose. I didn't go there for that purpose.

Q. When was your mother taken there?

A. My mother came there in 1926.

Q. What time in 1926?

A. Some time in September.

Q. Now, did you have professional charge of your mother?

A. No, sir. I had Dr. Rogers of Riverton to see her sometimes. Sometimes my partner saw her. Dr. McCarthy. I was her son. I wasn't her doctor.

Q. That is the reason of this question: Did you have professional charge of her? Your answer is no.

A. No.

Q. Now, Dr. Daniel J. McCarthy, did he have charge of her case?

[fol. 414] A. No, sir. My partner, Dr. J. W. Bransfield, had charge of it.

Q. What is Dr. Bransfield's name?

A. John W.

Q. Where is his office?

A. 2112 Spruce street.

Q. Is he still there in practice?

A. Yes.

Q. Is he here in court?

A. No, sir.

Q. Do you know he has been subpœnaed in this case?

A. I don't know.

Q. Do you know of your own knowledge how frequently during the time when your mother was taken there in 1926 and died I think—if I am wrong correct me—on January 9, 1929, did Dr. Bransfield visit her?

A. No, I haven't any knowledge.

Q. He is your associate?

A. Yes.

Q. Was he so then?

A. Yes.

Q. When did he become your associate, or you become his?

A. Really I don't know. He is my partner.

Q. Prior to 1926?

A. Yes.

Q. But you can't tell us, although Dr. Bransfield had charge of your mother?

A. I couldn't say "charge of her". She was an old lady, just gradually going down. It didn't require much medical attention. She was just there because she was an old lady and couldn't get around at nights. If anything went wrong they called me and either I went out or called [fol. 415] Harry Rogers, or if he couldn't go, and anything serious they got my friend, Dr. McCarthy to go out to see my mother. He just went out maybe once or twice. I don't know how many times.

Q. You mean once or twice in two or three years?

A. Yes. Towards the last end he came. She was just a gradual senile lady.

Q. Would you say your partner Dr. Bransfield was there once or twice in several years?

A. No, sir. Bransfield was out a good many more times than that.

Q. How many?

A. I really don't know.

Q. How many times did Dr. Rogers go out there?

A. I suppose Rogers during her last illness—seven, eight, nine, ten, 12, to 14 times. I don't know.

Q. What is his first name?

A. Harry.

Q. Where is his office?

A. Riverton and Moorestown. He has two offices.

Q. Is he in court?

A. No, not that I know of. I don't know.

Q. Now, did you go to the Cinnaminson house at any time in between the time that your brother, John T. Dorrance, moved to Woodcrest, Radnor, and the time that your mother was taken to the house at Pomona Farms, Cinnaminson, New Jersey?

Mr. Hannum: I object. Dr. Dorrance has not said that his brother moved to Radnor.

The Court: Objection overruled. Exception.

(Bill sealed for the executors.)

A. Yes.

[fol. 416] Mr. Hannum: My objection is to the word move. I don't want his answer to be based on that premise.

The Court: I will sustain the objection as to the word "move".

Mr. Gray: I am perfectly willing to take the word "move" out.

The Court: Went from one place to the other.

Mr. Gray: Yes.

Q. (Question repeated.)

A. I did.

By Mr. Gray:

Q. How long after John T. Dorrance went to Radnor, Woodcrest, Radnor, was your first visit made to Cinnaminson?

A. I think I answered that a moment ago.

Q. Answer it again, it will save time.

A. I couldn't definitely tell you. I couldn't definitely answer that more than to say it must have been two or three months, in there.

Q. What is that?

A. Possibly two or three months.

Q. Two months after he went to Radnor?

A. Yes.

Q. When did he go to Radnor?

A. In 1925.

Q. What time of the year?

A. I haven't that just in my mind.

Q. How do you know that was two months afterwards?

Mr. Hannum: I object to a question like that. He may [fol. 417] know that he went to Radnor without knowing at the time, and that two months after that time, he went to Cinnaminson.

A. It was about that time, as near as I can get at it.

The Court: He said that he couldn't say.

By Mr. Gray:

Q. What was the purpose of your first visit to Cinnaminson after John T. Dorrance went to Radnor?

A. I haven't the faintest idea,

Q. What were the purposes of the various visits that you

say you made between 1925 and the date of John T. Dorrance's death, when you went to Cinnaminson?

A. Sometimes to get dinner. Because I would go to see people in Riverton and I would go over there and have dinner, and then go somewhere else. Other times, I would go out there to play golf. I would go there and have dinner. I might sleep there if it was too hot in my home. Again I would go out there hoping to see him out there. Other times I would go down there by appointment to see him. Those are the only reasons that I know why I would go there.

Q. He was interested in the farms, of course?

A. He was?

Q. Yes.

A. Yes.

Q. Supervised them, you said?

A. He had a head agriculturist in charge of them. They reported to him.

Q. The agriculturists in charge of the experimental farms reported to your brother, John T. Dorrance?

A. Yes.

Q. How many times would you say that you slept at Po-
[fol. 418] mona farms from 1925 to the date of John T. Dorrance's death?

A. Maybe forty, or fifty or sixty, I don't know. Somewhere in there.

Q. Did you ever sleep there in winter time?

A. Yes.

Q. Did you ever sleep there in summer time?

A. Yes. Many times in summer time.

Q. Did you ever know Dr. John T. Dorrance to sleep there over night?

A. Did I ever know Dr. Dorrance to sleep there over night?

Q. Yes.

A. Many, many, many times.

Q. Did you ever know Mrs. Ethel Dorrance to sleep there over night?

A. Yes.

Q. You have been there on nights when she has been there?

A. Yes.

Q. Would any of the children sleep there over night?

A. I think so, yes.

Q. You are not sure about that?

A. I am most sure.

Q. How many times have you known Mrs. Ethel Dorrance to sleep there over night?

A. I couldn't swear to just how many. It seems to me to my recollection it would be sometimes—I am trying to figure it, according to my recollection—especially there for quite a long spell——

Q. You were never there for a long spell?

A. I never stayed there any long spell.

Mr. Gray: I ask that that be stricken out.

[fol. 419] The Court: I refuse to strike it out.

Mr. Gray: Grant me an exception.

(Bill sealed for the Commonwealth.)

By Mr. Gray:

Q. I am asking you a question, which please try to answer: How many nights do you know, of your own knowledge, that Mrs. Ethel Dorrance slept at Pomona farms since that place at Radnor was bought in 1925?

A. Do I know that she slept in the house, that is know it, or whether I was told that she had been there for in that length of time.

The Court: Answer the question, if you were down there.

By Mr. Gray:

Q. Of your own personal knowledge?

A. I suppose my own knowledge would then be, I should say, about forty, as near as I can get to it.

Q. Did you count that forty up on your fingers just now?

A. I tried to, yes, Mr. Gray.

Q. How many times did you visit Woodcrest at Radnor?

A. Now, do you mean—that is went out on social visits or do you mean to stay there over night?

Q. I mean the number of times you have been there?

A. The number of times. I haven't any idea. I think I have slept there four times. I don't believe I have been there over forty times, or thirty—thirty or forty times. I just didn't keep track of them, Mr. Gray. If I cut out his last illness when I was out on professional calls it would [fol. 420] naturally go down quite a lot. I was counting those professional times that I had to go out there.

Q. Your visits to Cinnaminson, you counted your professional visits you made there?

A. No, sir. I didn't go out there for that reason at Cinnaminson—only his last illness, say the last four or five days—I counted those in, in the same way that I counted up—

Q. When you stayed at Woodcrest over night, did you stay there on occasions when Dr. John T. Dorrance was not there?

A. Yes.

Q. When was that?

A. That was not unless when there were several times he was abroad and something was wrong with one of the children and I stayed out there.

Q. Mrs. Dorrance and the child were always at Woodcrest when you were there?

A. Mrs. Dorrance was abroad at that time.

Q. But at all times she and the children were there?

A. At my visits?

Q. Yes.

A. No, sir. I went out several times and Mrs. Dorrance and Doctor were abroad. I went out there just to see how things were going.

Q. To see the children?

A. Just the same as any other brother would go.

Q. Were the children abroad with them?

A. No, sir.

Q. Where were the children?

A. There at Radnor.

Q. That is the place I am talking about, were they there?

[fol. 421] A. Yes, they were there. Not all of them. Some would be abroad with her; some would be there.

Q. Let me come back to Cinnaminson. When were you called to Cinnaminson either professionally or because of your being his brother on account of the last illness of Dr. John T. Dorrance?

A. The day that he got back.

Q. What date was that?

A. Of course, I had phoned to know, I remember over the phone to the Campbell Soup Company. I said "Notify me when Mr. Dorrance gets back. I want to see him."

Q. When was the date that he got back?

A. He died on the 21st. It was, I think, seven days

before that that he returned. It must have been on this date.

Q. When was he taken sick, on the day that he returned?

A. No, sir. Just about the same that he had been for sometime. He hadn't been well.

Q. When was he taken sick in his last illness?

A. You mean the final thing that terminated in his death? Four days before he died.

Q. Do you know where he was taken sick?

A. No, I don't.

Q. You were connected with the Campbell Soup Company, weren't you?

A. Yes.

Q. Were you there every day?

A. Where?

Q. What am I talking about?

A. You are talking Cinnaminson, I think.

Q. I asked you whether you were connected with the Campbell Soup Company?

[fol. 422] A. Yes, I am vice president.

Q. Then I asked you whether you were there every day and you asked me where? Now I am talking about the Campbell Soup Co.?

A. I thought Cinnaminson—my brother's illness is what I have connected up with.

Q. May be I don't put my questions intelligently. I am now talking about the Campbell Soup Company. Were you there every day?

A. I don't remember.

Q. You don't remember?

A. I wasn't there every day. I didn't go to the Campbell Soup Company every day.

Q. How often did you go there?

A. Sometimes I might go there every day for a week; then I might be there one day a week or twice a week.

Q. In September 1930, between the 14th and the 21st were you at the Campbell Soup Company at all?

A. I certainly was.

Q. Didn't you know when your brother returned?

A. I certainly did know when my brother returned.

Q. You met him on the day that he returned?

A. I think it was that day or the next day.

Q. At the Campbell Soup Company?

A. At the Campbell Soup Company?
Q. Yes.
A. No.
Q. Where?
A. Cinnaminson.
Q. Didn't you see him at the Campbell Soup Company?
A. No, sir.
Q. When he came back you got a message did you?
[fol. 423] A. Yes.
Q. From whom?
A. I think it was from Miss Brinton, his secretary. I think that is who it was. I don't know who it was.
Q. Advising you that he was home?
A. Yes.
Q. Did you go to the Campbell Soup Company to see him?
A. I didn't see him at the Campbell Soup Company.
Q. Did you go to the Campbell Soup Company to see him?
A. No, sir.
Q. Did you call him on the phone at the Campbell Soup Company?
A. No, sir. I didn't talk to him on the phone.
Q. Did you have a previous appointment to see him on any particular day?
A. No, sir.
Q. You went to Cinnaminson to see him?
A. Yes.
Q. Day time or evening?
A. I haven't the faintest idea.
Q. Which day was it before his death that you then went to Cinnaminson after his return from Bar Harbor?
A. Let me get that question again.
Q. (Question read.)
A. I think it was the day after he returned.
Q. He wasn't ill then?
A. Well, he had been as ill as he had been for sometime.
Q. What did you go there to see him for?
A. Because he was my brother and wasn't well.
[fol. 424] Q. Why didn't you drop in to see him at the Campbell Soup Company?

Mr. Hannum: I object.

A. Because he wasn't there.

The Court: Objection overruled.

(Bill sealed for Executors.)

A. Because they phoned he was at Cinnaminson.

By Mr. Gray:

Q. They phoned that he was at Cinnaminson.

A. Yes. When he got back.

Q. Isn't it a fact that your brother was taken sick at the Campbell Soup Company and removed from the Campbell Soup Company to Cinnaminson, Pomona farms, and you having been sent for you were there when he was taken ill?

A. No, sir. That is not my recollection.

Q. Will you say that is not so?

A. I will say so.

Q. Where were you when he was taken sick?

A. Mr. Gray, I have been calling on him so long about that, many times, that I cannot answer that question directly. I mean all the times that I had been called to him. This man had not been well for a long time.

Q. Did you know that he was removed from the Campbell Soup Company place to the Pomona Farms after he was taken ill?

A. It is my recollection that he never went to the Campbell Soup Company place after he came down from Bar Harbor. It is my recollection that he came directly from Bar Harbor over to his home at Cinnaminson.

[fol. 425] Q. You say that you saw him the second day after he came back?

A. That is so, I think.

Q. When did you see him the next time after that?

A. I couldn't swear to that. I think the next day, as far as I remember.

Q. You were with him at the time that he died?

A. Yes. I stayed there.

Q. How many bed rooms are in the Cinnaminson house?

A. One, two, three, four, five, six, seven, eight, nine on the second floor.

Q. Does that include any servants' rooms?

A. They are upstairs.

Q. Nine bed rooms on the second floor?

A. I think that is right, it is eight or nine, I forget which.

Q. How many of those bed rooms during the week of September 1930 were furnished—during that week of the 14th?

A. All except one of them.

Q. How many of those bed rooms had covers on the beds?

A. All of them had.

Q. Did you go into all of them?

A. I don't say that I did. I walked down the central place, and looked into them. I didn't look into each bed room, no sir.

Q. Then you don't know?

A. But it is my recollection that all the rooms were.

Q. What is your recollection based on?

A. I walked down that corridor to go out into the back porch, as I remember it. I couldn't say definitely. The [fol. 426] rooms were furnished as they always had been.

Q. You say they had servants there then?

A. Yes.

Q. How many?

A. At the time he died?

Q. Yes.

A. I think there were three.

Q. Name them?

A. Name them? Their names?

Q. Yes.

A. I don't know their names, except Mary, the cook, the one I had dealings with.

Q. Do you know her last name?

A. No, sir, I don't. I never have known her name. It has been a good while. She was Mary to me.

Q. That is the only name that you knew her as, Mary, is it?

A. Yes.

Q. There was a waiting girl, I presume?

A. Yes.

Q. And there was a cook?

A. Yes, I think so.

Q. Do you know of any other girl there?

A. There was an older one. I don't know what her name is. I never paid any attention to her name. I don't know what her name is.

Q. Was the other named Bridget?

A. It seems to me, I think it is.

Q. You would know her if you saw her?

A. No, sir. I wouldn't know her name if I heard it.

Q. What were the apparent duties of the other one as you saw her around the house?

A. She was cleaning the rooms, I guess, and fixing the [fol. 427] halls up and sweeping the porch. I know she swept the porch.

Q. Tell me whether the name of the girl called Mary is Mary McLaughlin?

A. I don't know. I never heard her last name.

Q. Do you know whether that girl, Mary, is living or dead?

A. I don't know.

Q. Those are the only servants you saw?

A. It seems to me there was a third one around there that waited on the table. I won't swear to that now. I think there was.

Q. Do you mean to say you can't tell the Court during the time that you were there whether there was some other girl there other than the one that did the cooking and the one that cleaned?

A. Well, they were very such serious times that I remember very, very little. My brother was dying. I don't remember the details at that time. It was too much of a serious thing at that time.

Q. What other doctors were there in his last illness?

A. Dr. Wm. E. Hughes, he had attended him and did attend him then.

Q. Dr. Hughes of Philadelphia?

A. Yes. Dr. Ulmer from Moorestown. Dr. Gradle of Germany, also, who was not in attendance. But he just came back from over there and he had Gradle's medicine. Everybody does that—brings it back. Gradle sent reports to Hughes and I think reported to me. I know we went all over this medicine. I know Ulmer was one and Cohen from Moorestown was the local man.

[fol. 428] Q. Were those doctors in constant attendance at the house?

A. No sir. I was there a great deal of the time.

Q. Were any of them ever at the house?

A. Yes. Hughes was certainly there.

Q. Was any other there?

A. No. Ulmer was there.

Q. Those were times of difficulty and trouble. Go back to the times when you visited there and had dinner sometimes. Who were the servants there then?

A. This one that you termed Bridget, she was the elderly one—I don't know, she was there. Mary was there, and then there was one other. What her name was——

Q. Are you sure of that now?

A. Yes, I am sure they were there.

Q. You never saw any more than those three?

A. Not that I recollect. At least I don't count the chauffeur as a house servant.

Q. Did you ever attend any social gathering at Pomona farms, Cinnaminson, at which other people were present than those that have been discussed since your brother went to Radnor in 1925?

A. Yes, there was a meeting there—I don't just know—a lot of vestrymen of his church were there at his house. I don't know just when it was. And then I know he had some other gentlemen there, because I happened to come in. They said there was somebody here. I said: "Good by, I am going; I won't come in." I remember distinctly.

Q. Only those two occasions in five years?

A. In my mind. I hadn't thought of this before.

Q. Well, think of it.

A. Those are the two that are on my mind. There may [fol. 429] have been more. I don't remember at this moment.

Q. You can't think of any others?

A. I remember many times of men being there at dinner with him.

Q. Name any of them?

A. Mr. Armstrong.

Q. Is he here?

A. No, sir. Mr. Wallis Armstrong.

Q. Where does he live?

A. Moorestown.

Q. Any others?

A. Mr. Hall, his experimental agriculturist was there.

Q. You mean the one that had charge up there?

A. Had charge of all that business, of all the farms.

Q. Name anybody else?

A. I think Mr. Newkirk from the company there.

Q. What Newkirk, what is his first name?

A. Phillip Newkirk.

Q. What is his business?

A. He is purchasing agent of the Campbell Soup Company.

Q. Can you name anybody that came there other than for business that you met there?

A. Mr. Gray, there were a number of men came down to visit him. I wasn't there.

Q. I ask you to name anybody else that you met there?

A. No, sir, I couldn't.

Q. Your answer is no. Did you ever attend any social gatherings at Pomona farms, Cinnaminson, at which Mrs. [fol. 430] Dorrance and the children were present, or Mrs. Dorrance or the children, either way?

A. Nothing excepting the times of my mother's and my sister's death. They were there entertaining the people who stayed there.

Q. I am not referring to those. I am referring to social gatherings. You mean the funeral?

A. Before that. The night before, sir, when people came down and stayed there.

Q. But nothing else except that?

A. Not that I remember.

Q. Your sister was brought there ill too?

A. Yes.

Q. When was your sister brought there ill?

A. Now, she—that was in September, 1923 or 1924, to the best of my knowledge at the present.

Q. That is before Dr. Dorrance bought the Radnor place?

A. No, sir. I am wrong. Let me go over that just a minute. That must have been September 1926.

The Court:

Q. What year?

A. September 1926.

By Mr. Gray:

Q. What are those notes you have?

A. These are notes—I am trying to refresh my mind on these things.

Q. Let me see them please. They were made in a lawyer's office?

A. Yes, I asked him to look it up for me.

Q. And contained in a letter that was addressed to you by the lawyer.

A. Yes.

[fol. 431] The Court: This is not a Quarter Sessions Court.

Mr. Gray: I recognize that. But if my question be a proper one I must ask that I be permitted to put it—except under your Honor's ruling I will stop.

By Mr. Gray:

Q. When did your sister die?

A. June 6, 1928. I corrected that up by the burial note up at Bristol.

Q. So that your sister and your mother were present at Cinnaminson together for some period of time?

A. Parts of the time.

Q. You went to visit them, I suppose?

A. I certainly did. And come to think of it that would make my visits very much more often. I hadn't included those in. I must have been there a great many more times, because there wouldn't be one week went by that I didn't see my mother. So I didn't include those in. I was always there at least once a week.

Q. That was the principal purpose of your visiting there, wasn't it?

A. Yes, one of the principal—one of the reasons I went there—with the other reasons I had.

Q. You have been in Woodcrest, of course. I show you another photograph and ask you whether or not this photograph fairly represents the house and grounds at Woodcrest?

The Court: At Radnor, you mean?

Mr. Gray: Yes. I think the record shows that I named the house at Woodcrest—the house at Radnor was Woodcrest.

[fol. 432] A. Yes, I think that represents it. (Photo marked Com. Ex. 3.)

Q. Now you have attended many social gatherings at Woodcrest at Radnor?

A. Two.

Q. When were they?

A. One when my brother gave a dinner, I think to some Pennsylvania Railroad officer.

Q. About when, if you know?

A. I don't know the exact date. It is just one to the Pennsylvania Railroad officer. I forget who he gave the dinner to. It was one of the vice presidents of the Pennsylvania Railroad.

Q. The other.

A. The other when his daughter was married.

Q. When was that?

A. The two daughters were married. I don't just remember. One was married this spring. I don't remember the other one—the other was married some two or three years ago.

Q. Where was the one married this spring?

A. Right in the house at Woodcrest.

Q. The house at Woodcrest, Radnor?

A. Yes.

Q. Where was the other married?

A. At the church at Wayne.

Q. Yes.

A. No, not Wayne. I don't know—a church out there.

Q. St. Davids?

A. I don't know exactly. On this new road there as you go to Wayne. I don't know the name.

Q. You were in the church?

A. I don't know whether I can find that.

[fol. 433] Q. You were at the church?

A. Yes.

Q. And there at the house reception?

A. Yes.

Q. That was at Radnor?

A. Yes.

Q. Very large gatherings both of them?

A. The last one wasn't a large gathering; very, very small.

Q. On account of death?

A. Yes.

Q. That was the only time you were invited?

A. That wasn't the only time I was invited. That is the only time I went.

Q. How many times were you invited to social affairs out there?

A. I don't know. Numerous times. I don't remember them.

Q. Thirty-five or forty?

A. I couldn't say. My brother knew that I didn't care to go to those things.

Q. He sent you invitations?

A. He talked to me about them.

Q. You said that your brother knew that you didn't care about such things. I say for that reason, he didn't send you many invitations?

A. He talked to me about them. I might have received some. But they were the only ones I went to.

Q. They sent out formal invitations to many affairs out there?

A. Not that I remember.

Q. You don't recollect receiving any formal invitations, and didn't even get one to the wedding?

[fol. 434] A. No, sir. I don't even know that. I would have to ask my wife.

Q. Your brother, Mr. Dorrance, used to send Christmas cards?

A. I think one came to my wife.

Q. With a picture of Woodcrest, Radnor, on it, didn't he?

A. While I say that I saw them, Mr. Gray, the only one I remember was one picture like one with some snow around. I don't remember Woodcrest. I remember something like with snow on the ground.

Q. Didn't you get a Christmas card from him with a picture of Woodcrest, Radnor, on it as a Christmas card?

A. I never remember of such a card.

Q. Now, my recollection is of your testimony, and please correct me if I am wrong, that when you wanted to take your mother and your sister, one or the other, and I am going to ask you which one it was, to Pomona, and you asked your brother John T. Dorrance about it, he said that he would have to talk to his wife, is that correct?

A. Yes, that is correct.

Q. Was that your mother?

A. That was my sister.

Q. And he said that he didn't want or that Ethel—to use the language that you used—didn't want to have her running of the house interfered with, is that correct?

A. No, sir. That wasn't what I said.

Q. What was the thing that he said?

A. "Ethel would run the house just the same as she always had run it."

Q. How was that?

[fol. 435] A. She ran the whole house and always had run it.

Q. What did she do?

A. She dictated to the servants and ordered the food and all those sort of things.

Q. You saw that or heard it?

A. I know it to be true.

Q. Did you hear it?

A. That is what the cook always told me when I wanted anything special: "Well, I will have to ask Mrs. Dorrance about it," and then order—for my mother and sister.

Q. Did you ever take dinner with Mrs. Dorrance at Cinnaminson after 1925?

A. I think I have, yes.

Q. You are not sure about it?

A. Yes, I am sure about it.

Q. Once, you mean?

A. I think more times than that. But I couldn't just—I didn't put those things down in my records. I am sure it is much more than that—in the spring and summer. Yes—thirty, forty, fifty, sixty times.

Q. That just dawned on you?

A. I am just calculating when I was there at times in the spring and summer.

Q. Thirty, forty to sixty times.

A. Yes.

Q. The daughters were there at the same time, I suppose?

A. I can't remember whether they were or not.

Q. You can remember them for thirty, forty, fifty to sixty times?

A. I think that is as near as I can get to it. It may be [fol. 436] anywhere from twenty to forty, as near as I can remember.

Q. You also told me that he said his room must be preserved and not disturbed. Is that when he told you when you asked about taking your sister over there?

A. He said I want that kept so I can have it at any time.

Q. Do you remember why there was any necessity of in-

forming you that if your sick sister went there where your sick mother was that Ethel must run the house and that his room must still be preserved so that he could have it at any time?

A. He was a man that always had everything in that room. His things were kept there; he didn't want to move out. His ties and underwear, his pajamas, shoes, clothes were still in there—a certain part of them.

Q. They were the only clothes in the house were they?

A. I don't know about that. I remember getting a couple of night gowns because an accident happened to my sister and they found a couple of night gowns. Where the nurse found them, I don't know.

Q. You have no idea where they found those?

A. No, sir. I didn't go into those things.

Q. Do you know whether as a matter of fact that Dr. Dorrance, Dr. John T. Dorrance, avoided going to Cinnaminson during the time that your mother and sister were there ill?

A. No, sir. I don't know that he avoided that.

Q. You say that you saw them there while your mother and sister were ill, either one of them?

A. Yes.

[fol. 437] Q. No doubt about that in your mind?

A. Absolutely no doubt about it. My brother would go there.

Q. How many servants did they have there at Woodcrest?

A. I certainly don't know.

Q. You couldn't count them.

The Court: He said he couldn't tell.

A. No, I don't know.

By Mr. Gray:

Q. You have no idea?

A. No, sir.

Q. Your brother never told you that?

A. No, sir.

Q. Do you know why your brother was so careful always to hold these conversations about being a resident of New Jersey, with you?

A. Why this even came up at business as well as at lunch

time, at table. He said that every man connected with the Compbell Soup Company ought to be a resident of New Jersey and if he didn't stay over in New Jersey he couldn't insist upon the rest of them living over there and he thought it was essential to the business for them to be in contact politically and otherwise with conditions in New Jersey.

Q. Because you were a New Jersey Corporation?

A. A New Jersey Corporation.

Q. When he talked about becoming a director of the Pennsylvania Railroad you were a little worried?

A. I didn't like it.

Q. You said you asked him about moving to Pennsylvania?

A. No, sir. May I change—I didn't mind his becoming a [fol. 438] director of the Pennsylvania Railroad, but I didn't want him to be a director of the Pennsylvania Railroad if that meant that he had to give up his rights in New Jersey, because I thought firmly it couldn't be that way for business reasons.

Q. What rights in New Jersey?

A. I mean if he wasn't a resident of New Jersey—giving up voting rights.

Q. You asked him if he was going to move to Pennsylvania didn't you?

A. Yes.

Q. And he told you that he bought this place for his wife and kiddies?

A. Yes.

Q. You wanted to know whether it would involve any change of residence? He said no. You said, alright, if it won't interfere with your business?

A. It is all right with me if it doesn't interfere with your business, it is your business.

Q. You were vice president?

A. Yes.

Q. Do you have any stock?

A. One share of stock.

Q. Did you get any salary?

A. Yes.

Q. That is the only interest you had in the business, to get your salary?

A. No, sir. That isn't it. I didn't want particularly to go into the thing. But my brother wanted me to be there.

And I said: "Alright, Jack, I might possibly please you in some way." He said: "I wish you would come in very much and for many reasons. I want you here for a while. So I said: "Alright." I let him go ahead and do it.

[fol. 439] Q. What year was that?

A. 1915.

Q. Your brother was the kind of man that would have taken any orders from you with reference to what should be done relative to his residence or business, was he?

A. No, he wouldn't take orders from me. No, because our business isn't run that way. The head does run the business. You don't take orders from any one below you in that business.

Q. He was the only one in control.

A. Yes. He would take suggestions and he welcomed and would ask me for them. If I hadn't gone to him he would have said something to me for not coming to him.

Q. Now, you not only had discussion with him about his becoming a resident of Pennsylvania at the time that he either was buying or contemplating buying the property at Radnor, Pennsylvania, but then you had a very similar discussion with him at the time there was talk about his being elected a director of the Pennsylvania Railroad. Two separate occasions, wasn't there?

A. Yes.

Q. On each of these you went to him?

A. I went to him after very careful legal advice and asked about the thing, if it was alright. I wanted to know where I was standing. I asked if these Pennsylvania Railroad made any difference and they told me that it didn't make any difference; that men had been residents of other states and still director of the Pennsylvania Railroad and they instanced a State. George Graham, who happened to be a Congressman—that is what they told me—George Graham [fol. 440] happened to be a Congressman from Pennsylvania and he purchased a place in New York and he lived there most of the time. That is what they said.

Q. Now you used this expression in answer to my question: "You wanted to know where you were standing". What did you want to know about your standing. What did you mean by that?

A. My standing? I didn't say anything about my standing.

Q. (Answer read.)

A. I said to my lawyer I wanted to know where I was standing.

Q. Why did you want to know where you were standing?

A. I wanted to know—I went to a lawyer to find out about whether the advice that I had obtained was correct—if he was a director of the Pennsylvania Railroad it didn't make any difference where he lived. I wanted to get that fact straightened out from the legal end of it.

Q. How did that effect your standing?

A. I haven't any standing. I wanted to know for business reasons.

Q. How did it effect business?

A. Because I thought he ought to be a resident of New Jersey, and if becoming a director of the Pennsylvania Railroad necessitated that he be a resident of Pennsylvania, I would then object to it very strenuously.

Q. You would have objected to it?

A. Yes.

Q. With your foot on one share of stock?

A. Well, now, my brother and I weren't one share of [fol. 441] stock. He talked to me about those things. We had conversations about those things. It wasn't one talk.

Q. So you and your brother continuously did everything you could to keep him before the public as a resident of the State of New Jersey, didn't you?

A. I don't think we did anything for that.

Q. You don't think you did anything for that purpose?

A. No, sir.

Q. I asked you about the doctors who had charge of your mother, were they the same doctors that had charge of your sister at Pomona farms?

A. Doctor Charles Potts saw my sister at Cape May and he was out there to see her at certain definite times to regulate things.

Q. What address, what is his address?

A. He is dead.

Q. Were there any other doctors that had charge of your sister?

A. Dr. Bransfield, my partner was there a great deal. Then I think Ulmer was on there to. These things are a little hazy. Yes, I think Ulmer was there. Mostly it was Bransfield and Potts. Potts came out regularly at stated definite visits. It was a case of an injury to the back,

broken back, following a fall, so there was nothing much to be done except nursing.

Q. Do you see here in the Court room any of the servants that you ever saw at Cinnaminson?

A. Peter was there.

Q. What is Peter's last name?

A. He has a Russian name. I don't recall the name.

Q. Orliff—I will speak it?

A. It might be. I won't swear that is it. Charles was [fol. 442] there, the chauffeur. I don't know Charles last name.

Q. What was Peter's business?

A. He did anything that anybody wanted him to do. He also looked particularly after my brother. He looked particularly after my brother, any wish that he might want.

Q. He came over with him and went back to Radnor with him, you mean.

A. I don't know when Peter came with my brother. I think it was after my brother got to Radnor.

Q. What about Charles?

A. I think Charles has been there for twenty years.

Q. Where?

A. Everywhere, both places.

Q. He was the chauffeur?

A. Yes.

Q. What is his last name?

A. I don't remember.

Q. Hasker?

A. Yes.

Q. He was the chauffeur who drove Mr. Dorrance up there?

A. To where?

Q. I asked you if there were any servants here?

A. I am trying to see if—I guess that is Mary, I don't know. There is somebody there. It looks like Mary. I wouldn't swear to it. I think that is Mary. I wouldn't swear to that. I don't see anybody else.

The Court: How does that get on the notes "That is Mary".

Mr. Gray: I am satisfied. If your Honor would like to have her stand up and be identified.

[fol. 443] Q. Will you indicate which lady it is?

A. I think it is this lady right back there with the black hat. I think so.

Q. If you indicate the lady——

A. That lady right back there; she is looking back. I don't know whether that is the one or not.

Mr. Gray: Will you please stand up. Is that the lady you mean.

A. I think it is. I am not sure about it.

Mr. Gray: Can we have your name?

The Lady: Mrs. Reed A. Morgan. I am from Roxborough, Philadelphia.

The Witness: I am sorry. I thought that was Mary. I beg your pardon if I have done anything I shouldn't.

By Mr. Gray:

Q. How long did the Campbell Soup Company own that Pomona Farm, do you know?

A. Well, it has been—one part—it has been added to several times—Pomona Farms. If you mean where Mr. Dorrance went at first first went—that first one was purchased in 1911.

Q. That memorandum that you have were you testifying from that?

A. A gentleman in court just handed me that as he came in.

Q. Who handed it to you?

A. I think this gentleman with the bald head, with the white—that white haired gentleman just handed it to me [fol. 444] in a letter. I was reading it to see what it was.

Q. Were you testifying from it?

A. No, sir. I don't know anything about it.

Q. If you were testifying from it, I had a right to see it?

A. No, sir. I don't even know what was in it. It was just handed to me as I came in. I thought it was something important. I didn't know anything about it. I thought it was something I had to do in court.

Mr. Gray: You might have waited until you got through before reading your correspondence.

That is all.

ARTHUR C. DORRANCE, sworn.

By Mr. Hannum:

Q. What relation were you to Dr. John T. Dorrance, the decedent?

A. A brother.

Q. You were younger?

A. Twenty years younger.

Q. What is your business or association?

A. I am President of the Campbell Soup Company.

Q. And have been for how long?

A. I was elected shortly after my brother's death.

Q. What position did your brother occupy with the Campbell Soup Company?

A. He was President.

Q. For how long?

A. From 1915.

Mr. Gray: If you want to save time, if this is a matter of corroborating witnesses that he was connected with the [fol. 445] Campbell Soup Company, I will admit it.

Mr. Hannum: You answer the question.

A. My brother was President from 1915 until his death.

Q When did you first go with the company?

A. My first regular employment with the company was in 1914 upon graduating from college.

Q. In what capacity?

A. I went in to learn the business as a laborer.

Q. Will you just tell us your gradations in the company, if you will?

Mr. Gray: I object as totally immaterial and irrelevant. We are not concerned with what this young man did.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. I continued with the company until 1915 and then I went with the Franco-American Food Company, Jersey City, and left there to enter the service. Sometimes after I was discharged from the army I returned to the Campbell Soup Company which was in the year 1920, month of September.

Q. Then what were your activities in the Campbell Soup Company from that time on?

A. Shortly after returning to the Company I was appointed assistant to the General Manager. My brother was both President and General Manager.

Q. Shortly after your return in 1920 you became your brother's assistant?

A. One of them.

[fol. 446] Q. One of them?

A. Yes.

Q. Are you acquainted with and familiar with the growth of the company from your first association with it until the present time, Mr. Dorrance?

A. More particularly from 1920 until the present time.

Q. Will you describe the growth of the company in that time?

Mr. Gray: That is objected to.

The Court: I don't see that is material. How is it material?

Mr. Hannum: To show the large interest and great stake that this decedent had in this entire company in the State of New Jersey.

The Court: I sustain the objection. Give you an exception.

(Bill sealed for the Executors.)

By Mr. Hannum:

Q. At the time of Dr. Dorrance's death how extensive was this business?

Mr. Gray: That is objected to. It is the same question in a different form.

Mr. Hannum: That isn't the purpose of it.

The Court: I will admit and give you an exception.

(Bill sealed for the Commonwealth.)

A. At the time of my brother's death it was one of the [fol. 447] largest companies engaged in the canning and preserving of food products.

Q. One of the largest companies where?

A. In this country.

Q. How many men did it employ; its buildings, give the general details of this business.

Mr. Gray: Your Honor's ruling covers all this.

The Court: Yes.

A. Am I to answer that question?

Mr. Hannum:

Q. Yes.

A. The Company's property in Camden comprised 16 acres; the business employed from 4000 to 5000 people depending upon the season of the year. It contracted in 1930 for approximately 24,000 acres of tomatoes.

Q. In New Jersey?

A. In the State of New Jersey. In addition to that it required a quantity of carrots and potatoes and other vegetables, which were, however, under contract. Between sixty-five and seventy-five per cent of the employees were residents of New Jersey. Although there was no requirement of residence in New Jersey.

Q. Go ahead. What about its payroll and daily output?

A. The payroll was approximately $60,000 a week. The daily output reached the maximum total of a little more than nine million cans a day.

Q. Will you tell us please how closely connected and how frequently you saw your brother during the period of his activity over there and yours?

[fol. 448] A. My brother ran the business, all departments of it.

The Court:

Q. He asked you how often you saw him?

A. I saw him daily when he was in Camden.

By Mr. Hannum:

Q. Did you ever have any talk with him or he with you regarding his prospective directorship in the Pennsylvania Railroad?

Mr. Gray: Yes or no.

A. Yes.

By Mr. Hannum:

Q. What was that conversation?

Mr. Gray: That is objected to.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He said: "I have been notified of my election to the Board of the Pennsylvania Railroad." I congratulated him upon his selection. And he said: "I don't think I will accept". And I asked him why? And he said: "Because I am a resident of New Jersey and I understand that one of the requirements of the directorship in the Pennsylvania Railroad is residence in Pennsylvania." But he said: "I am going to talk to General Atterbury about it." Later, some days later he told me that he was mistaken about the [fol. 449] requirement and that he had been assured by General Atterbury that it was known to the directors that he was a resident of New Jersey at the time they elected him.

Q. Under that condition did he accept?

A. He accepted the service.

Q. Are you one of the co-executors of your brother's estate?

A. I am.

Q. Prior to his death, did you ever have any conversation with your brother in regard to the management of his estate or anything regarding it?

A. I did.

Q. What was that conversation, when was it, if you can recall?

A. In 1928.

Q. What was that conversation?

Mr. Gray: That is objected to. May I state my reasons?

The Court: Unless it has some reference to residence.

Mr. Hannum: It has. That is the purpose.

The Court: If he connects it, I will admit it. If it isn't proper I will exclude it.

Mr. Gray: Exception.

(Bill sealed for the Commonwealth.)

A. In the course of a business conversation in my brother's office he said: "By the way, if you ever have anything to do with the management of my estate remember this: I want my will probated in New Jersey; I want the estate administered in New Jersey and I want you to fight to the [fol. 450] last ditch any effort to have it administered in

the State of Pennsylvania." I was embarrassed at this statement, which came without any introductory remarks, and I said: "You are quite as likely to read my will as I am to read yours." He said no more about it.

By Mr. Hannum:

Q. You said that you had almost daily contacts with your brother when he was here in Camden about the business?

A. Yes.

Q. Did he on any of those occasions ever express to you his intention regarding his home or domicile?

Mr. Gray: Yes, or no.

A. Yes.

By Mr. Hannum:

Q. What did he say?

Mr. Gray: That is objected to.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He said that it is too long to run out to Radnor, fifty minutes to go out and fifty-five minutes to come back; I am going to stay more over at my home in Cinnaminson. He said Radnor is necessary for Ethel and the girls but I am better at Cinnaminson.

Q. Do you recall any other conversation in or about or shortly before his death in which there was a discussion of the purchase of another tract of land?

A. Yes.

[fol. 451] Q. ~~Will you~~ tell us what that was, please?

Mr. Gray: That is objected to.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. I was considering the purchase of a tract of land near farm No. 1 which adjoins Pomona farm at my brother's home at Cinnaminson.

Q. Just particularize that so that we can get the relation, Mr. Dorrance, please. You say your brother's home at Cinnaminson was where?

Mr. Gray: If he uses the word "home" as meaning house I have no objection. If you intend to ask this man, or witness, where his domicile was, I am objecting to it positively.

A. Home or house?

By Mr. Hannum:

Q. What did your brother call Cinnaminson?

A. He called it his home. It was contiguous to the experimental farm, what we described as farm No. 1 of the Campbell Soup Company. I had in mind to purchase a small tract of land across the road from Farm No. 1 and quite near to Pomona farm. And I had gone so far as to consult an architect.

By Mr. Hannum:

Q. You were purchasing it for what?

A. For a residence for myself.

[fol. 452] By the Court:

Q. Did he say anything about it.

A. I was considering which way I would have the house face which depended somewhat upon his continuance there, and he said "I am always going to live here."

Q. What?

A. He said: "I am always going to live here." That was in reply to my inquiry as to the continuance of his residence at Pomona farms.

By Mr. Hannum:

Q. Will you describe the house and grounds and so on in a general way which your brother called home in Cinnaminson?

A. The home at Cinnaminson consisted of approximately seven acres of ground; very attractive trees because they had been planted by nurseryman who owned the property before it was purchased by the Company. The house itself is approximately fifty to fifty-five years old; brick construction; remodeled; it was enlarged somewhat at the time of the commencement of its use by my brother. I think may have added fifty or sixty percent to the original size of the house. It has some very attractive rooms. The dining room in particular is the one that he liked.

Mr. Gray: I object to his describing it as attractive. We are not particularly concerned.

The Court: Objection overruled. Exception.

By Mr. Hannum:

Q. Go ahead.

[fol. 453] A. On the ground floor the most attractive room is the dining room, which is very large that at one end he had his dining room table, and another end was used as a breakfast room.

Q. When does that description apply?

A. From the time of 1911 to my brother's death. I was familiar with the house throughout that period. Upstairs there were a number of rooms, I should say eight or nine rooms and there were three or four bathrooms. As to what was on the third floor, servants quarters, I have no knowledge. I was never there. In the rear of the house is a garage. In back of that is a large greenhouse used by the Company in that section of New Jersey. It is considered one of the attractive places.

Q. What are the grounds like. You spoke of them as being seven acres?

A. Yes. Very well kept up, always have been.

Q. What do they contain?

A. It has a lawn with many old beautiful trees, elms, a great variety of trees on account of the nurseryman having taken an interest in laying out the property itself.

Q. Did your brother take any continuous interest in the upkeep of that establishment?

A. Yes. He did it, and improved it very much during the period of his occupancy. He increased the planting. He brought hydrangeas there.

Q. This planting, you mean planting shrubbery and trees and so forth on the ground?

A. Yes. He was very critical of it in any way—the condition of the lawn—if it was allowed to get out of repair or good condition.

Q. From 1911 up until the time of his death were there [fol. 454] or were there not employees constantly engaged in the upkeep of the grounds and lawn?

Mr. Gray: That is objected to. There is no possible knowledge other than what the brother of this witness told him.

Mr. Hannum: I am asking him about his knowledge.

Mr. Gray: I object to the question.

The Court: Objection is overruled. Exception.

(Bill sealed for the Commonwealth.)

A. I remember seeing one or two men frequently at work cutting the grass; sometimes it was trees sprayed. It was a well kept place.

Q. Between cleaning up and keeping the grass and lawn——

A. The leaves were regularly raked off the lawn. It was well manured.

Q. Did you visit your brother at Cinnaminson between 1911 and 1925?

A. Yes, I did.

Q. Frequently or not?

A. Very frequently in 1911 until the time that I went into the army, because I was unmarried.

Q. When was that?

A. In 1917, May.

Q. From 1925 until 1930 did you visit your brother and his family at Cinnaminson?

A. Occasionally.

Q. How often?

A. I should think six or eight times a year.

[fol. 455] Q. Who would be there on those visits that you made, Mr. Dorrance, to your brother and his family?

A. It depended upon the time of year. In the spring and fall Mrs. Dorrance was often there and one or two of the children; seldom all of them; and more apt to be the younger ones.

Q. How long would they be there in the spring and fall?

Mr. Gray: If that is to be limited by the length of time of his presence there, I have no objection. If it calls for what he may have learned, I object.

The Court: He is speaking from his own knowledge, of course.

A. I would be there frequently week-ends and I know Mrs. Dorrance and the children were there then. I know that my brother continued to go in and out from Cinnaminson to business and I assumed his family was still there even though I might not have gone there on consecutive nights.

By Mr. Hannum:

Q. Were you there in the winter time when your brother was there?

A. Yes, but less frequently.

Q. On or about the occasions when your were there, what was the condition of the house as to livability and servants and furnishings and general condition for a home and habitation?

A. It was always the same. They seemed to have the same corps of servants right through the years. I saw no difference between the maintenance of the house before he [fol. 456] purchased Woodcrest and after he purchased Woodcrest.

Q. It was identical?

A. Yes.

Q. On any of the occasions that you went to Cinnaminson, in all the period that you went there, and particularly from 1925 until 1930, was the house at Cinnaminson ever closed?

A. No, sir.

Mr. Gray: Not while you were in the house. That is what you mean.

A. Not while I went there.

The Court: While he was there. That is all he is speaking of.

By Mr. Hannum:

Q. Was your brother there on all of those occasions?

A. No, sir. Sometimes he was there; sometimes he was not.

Q. Were there occasions when Mrs. Dorrance was there and he was not and vice versa?

A. Yes. I can remember one or two such occasions.

Q. Occasions when the children were there, with and without the parents, or with one parent or the other?

A. I remember the children being there with Mrs. Dorrance. But I don't recall an instance when they were there and she was not.

Q. How many were they, how many children?

A. There were five children of varying ages.

Q. How often between 1925 and 1930 was your brother at the house in Cinnaminson?

[fol. 457] Mr. Gray: That is objected to. He can't tell that.

The Court: Unless he knows he can't tell. If you are speaking of your own knowledge you can answer the question.

A. May I ask for this question?

Q. (Question read.)

The Court: From your own knowledge, or what he told you?

Mr. Gray: I must interpose another objection if your Honor allows what his brother may have told him.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. In the course of business talk my brother would say: "I am going out to Woodcrest" or "I am going out to Cinnaminson tonight", and in that way I had general knowledge about the frequency of his visits to Cinnaminson. He lived there for a part of every month, I should say.

Mr. Hannum:

Q. Where else did he live beside Radnor and Cinnaminson.

Mr. Gray: That is objected to.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. I remember he was at Jamestown one or two summers, but not there through out the summer.

Q. Where was he when he wasn't at Jamestown?

[fol. 458] Mr. Gray: Objected to.

A. At Cinnaminson.

Mr. Gray: I object. He can't know unless he was with him.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. Later he spent the summer in Bar Harbor and came down to Cinnaminson at intervals of every two or three

weeks and stayed perhaps four or five days and then returned to join his family at Bar Harbor. On those occasions the house at Woodcrest not being open he stayed—this I am sure—at Cinnaminson. Frequently I went there with him during the summer. His family being away and my family away.

By Mr. Hannum:

Q. What sort of a cottage did he have at Bar Harbor, if you know?

Mr. Gray: Objected to as immaterial and irrelevant.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. An attractive home with perhaps five or six acres of ground along the ocean front, quite large but not a new house, the only one that I visited. In other years he had another house but I didn't see it, because I didn't visit it.

By Mr. Hannum:

Q. Who told you that?
[fol. 459] A. Either he or Mrs. Dorrance told me.
Q. Then I understand from you that he went to Jamestown in the summer time and when he wasn't at Jamestown he was at Cinnaminson, is that correct?

By Mr. Gray: That is objected to.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. When he was near Camden and I saw him he was living at Cinnaminson during the summer.

By Mr. Hannum:

Q. When they had a home at Bar Harbor and he wasn't at Bar Harbor where was he.

Mr. Gray: I object.
The Court: How can he tell?
Mr. Gray: That is the reason I object to the other.

Mr. Hannum:

Q. From what you saw or from what he said to you?

A. When he was down to his business in Camden he spent the nights at Cinnaminson during the summers. I couldn't say that when he wasn't at Bar Harbor that he was at Cinnaminson, because he occasionally visited his daughter at Newport.

Q. Was he at Radnor on those occasions, from what you know or from what he told you?

Mr. Gray: Objected to.

[fol. 460] A. Not from any knowledge——

The Court: Was he at Radnor on those occasions—unless you know of your own knowledge or what he told you you can't answer.

Mr. Gray: I object to what he told him or of his own knowledge.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. To my knowledge he was living at Cinnaminson on those occasions.

Mr. Gray: I object and ask that the answer be stricken out as not responsive.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. Do you know of your own knowledge whether or not the years that Dr. Dorrance and his family had a summer home at Bar Harbor that the house at Radnor was closed?

Mr. Gray: I object. It is leading. He will have to lay the basis of this knowledge before this witness can answer the question. In the first place the question is leading. It suggests that the house in Radnor was closed. In the second place before this witness can testify he should be asked the basis of that knowledge.

The Court: Whether he knows of his own knowledge or what Mr. Dorrance told him, I suppose he meant.

[fol. 461] Mr. Hannum: That is what I mean.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. I was told that it was closed.

By Mr. Hannum:

Q. What did he tell you?

A. That "I am living at Cinnaminson. Woodcrest is closed."

Q. Do you recall, Mr. Dorrance, when your brother purchased the place at Radnor?

A. Yes.

Q. Did he say anything to you at that time about his reason or purpose in purchasing it?

A. No, sir.

Q. Did he express any intention to you for purchasing it?

Mr. Gray: He said that he didn't say anything.

The Court: Did he or did he not? What did he say.

Q. (Question repeated.)

Mr. Gray: I object to that. He did answer that he didn't speak to him about it.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He didn't tell me the purpose of purchasing it. But he told me that he had bought a house on the main line.

[fol. 462] By Mr. Hannum:

Q. Did you make any inquiry regarding what he was going to do towards going to that place?

Mr. Gray: Objected to.

A. Yes.

By Mr. Hannum:

Q. What inquiry did you make?

Mr. Gray: That is objected to, as totally immaterial and irrelevant whether he made inquiry or not.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. What inquiry did you make?

Mr. Gray: Objected to.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. I said: "Are you going to live in Pennsylvania? He said: "No, I am going to continue to live in New Jersey."

By Mr. Hannum:

Q. Did you have any conversation with him regarding the trips over and back at any time to Radnor?

Mr. Gray: That is objected to. This entire testimony [fol. 463] has been the testimony of counsel, suggestions of counsel. I am objecting to it.
The Court: The objection as to that question is sustained. Put it in some other shape.

(Bill sealed for Executors.)

By Mr. Hannum:

Q. Did you attend your brother's funeral?
A. I did.
Q. Where was it held?
A. The funeral services were at the church in Riverton, Christ Church, Riverton, and the burial was at West Laurel Hill Cemetery.
Q. I am talking about where the funeral services were held. Were there any services at Cinnaminson, or gathering of people there?
A. The family gathered at Pomona Farms and went to the Church from there in the funeral procession, the church being in Riverton, New Jersey, three miles away.

Mr. Hannum: That is all. Cross-examine.
The Court: Before cross-examination, take a recess until two o'clock.

Two o'clock. Court convened.

Cross-examination.

By Mr. Gray:

Q. You are married, I think; you referred to your family?

[fol. 464] A. Yes.

Q. You were married when? What year?

A. 1918, in February.

Q. So that you spoke of returning to the Campbell Soup Company's employ in 1920 and from then until 1925 your brother and his family lived at Pomona farm. When I say your brother, I mean Mr. John T. Dorrance?

A. Yes.

Q. You visited them frequently with your family during that period of time?

A. No, sir. We lived at that time in Camden and some of the time in Riverton nearby and we occasionally went over to my brother's home.

Q. I mean you and your family visited your brother and his family at Cinnaminson?

A. Occasionally.

Q. Just what do you mean by occasionally. How frequently or how occasionally would that be?

A. I was there more frequently——

Q. I am speaking of you and your family first. I am asking you about your family?

A. Two or three times a year.

Q. Mr. John T. Dorrance visited you at your home when you lived at Riverton?

A. No, sir, I don't recall that he did.

Q. Did they visit you at your home in Camden when you lived at Camden?

A. Yes. We lived at Camden.

Q. They visited you there?

A. No, sir.

Q. So that most of the visits that you made to the home in Cinnaminson between 1920 and 1925 were your own personal visits?

[fol. 465] A. Yes, most of them.

Q. I suppose a great many of them would be connected with business?

A. Many.

Q. Mr. and Mrs. John T. Dorrance entertained at the Pomona farms?

A. I don't recall any large entertaining there.

Q. Such as a family would do living in a place of that kind at that time?

A. Yes.

Q. After 1925, you knew of course that the family took this home at Woodcrest, Radnor?

A. Yes.

Mr. Hannum: I object. You are doing the same thing that you object to my doing, talking of his home.

The Court: Objection overruled. Exception.

(Bill sealed for the Executors)

By Mr. Gray:

Q. Well, we will change it to house and extensive grounds, stable and numerous outbuildings. May be that might suit you better. You knew, of course, of their taking that place at Radnor?

A. Yes.

Q. And after 1925 did you and your family ever visit your brother John T. Dorrance at Cinnaminson?

A. Occasionally.

Q. You and your family?

A. My wife and I. My children were quite small.

Q. When I speak of your family, of you and your family I am speaking of you and your wife You and your wife occasionally visited them at Cinnaminson?

[fol. 466] A. Yes. I don't recall that we stayed over night.

Q. Prior to that time you had?

A. No, sir.

Q. There was no necessity for it because you lived near-by?

A. Exactly. There was no difference.

Q. How many times did you say that you and your wife visited Cinnaminson and visited your brother and his family there after 1925?

A. I think three times.

Q. For a specific purpose on any of those times?

A. I don't remember any specific purpose other than social.

Q. You are not including when your brother, Dr. Dorrance died, the time you went over to the funeral?

A. No, sir.

Q. You saw your brother there at Cinnaminson numerous times after 1925?

A. Yes.

Q. Principally for business, I suppose?

A. I don't know how much was business and how much other than business.

Q. He was very much interested in his garden up there?

A. Yes, very much.

Q. And the farm or several of the farms of the Campbell Soup Company were just adjoining there, that is correct?

A. Yes.

Q. I thought you described his place as a place of seven acres?

A. Yes, Pomona farms, seven acres.

Q. How frequently did you and your family visit at Woodcrest, Radnor after they took the place?

[fol. 467] A. I would answer that the same way: Two or five times a year.

Q. Stay there over night?

A. No, sir.

Q. Were you there to the various social gatherings they gave?

A. Not very many.

Q. You knew that he gave a great many?

A. Most of them, so far as I know, were just for their children.

Q. Whoever they were for, you knew they gave a great many social entertainments at different times there at Woodcrest?

A. I don't think they gave a great many.

Q. You read the newspapers?

A. Yes.

Q. Haven't you seen many accounts of the various social gatherings as given in the newspapers?

A. I don't recall.

Q. Now, we have had identified here a picture of the house at Pomona farms. I want to show it to you and ask you whether you recognize it as being the house of Mr. Dorrance as shown in Commonwealth's exhibit one?

A. Yes, that appears to be the house.

Q. Now, is Mrs. Dorrance living there now?

A. I am not sure.

Q. When were you there last?

A. I was at the farms quite frequently during the harvesting season.

Q. When were you last in the house at Pomona farms, Cinnaminson?

A. Shortly after my brother's death.

Q. No since?

[fol. 468] A. Yes. I did go in since. There had been some derangement in the ceiling and I went up there when it had been repaired. My sister-in-law was up at that time.

Q. Prepared for them to come back into the house?

A. Repaired.

Q. Repaired and prepared for Mrs. Dorrance and the children to come in the house?

A. I didn't think of that. I wanted merely to make sure that it was properly repaired.

Q. You spoke about the place of being kept in good repair. It has been painted and fixed up since this litigation started?

A. It was painted.

Q. When?

A. Last spring or early summer. But that was part of the usual treatment of the house. It has a great deal of wood work.

Q. How long had it been since it had been painted before, if you know?

A. I remember that it was two years or two and a half years previous.

Q. Two to two and a half years previous?

A. That would be my impression.

Q. Isn't is a fact, Mr. Dorrance, that the place was allowed to go into disrepair up until the time after—sometime after your brother John T. Dorrance's, death?

A. No, sir.

Q. Now there were seven acres around that place?

A. Approximately.

Q. Has there been a good deal of repair work done there this summer as well as painting it up?

A. Just the same as usual.

[fol. 469] Q. That don't answer my question: Has there

been a good deal of repair work done there this summer, as well as the painting of it?

A. No, sir. Just the care of the place; maintenance of the house and planting the ground.

Q. Has there been a good many mechanics doing a great deal of work in the house?

A. In connection with the house it was found that some of the wood work rotted. I know that because the house was the property of the company and it was leased by Dr. Dorrance.

Q. Dr. Dorrance never owned it?

A. No, sir. It came under my jurisdiction to see that it was properly maintained.

Q. Saw that it was maintained by the Company?

A. Yes.

Q. This is a picture after it was repaired and after it was painted?

A. I couldn't say that. It was painted the same color.

Q. You couldn't tell from the photograph. Since 1925, the telephone bills for the house have been paid by the Campbell Soup Company, haven't they?

A. Not to my knowledge.

Q. You say that they haven't been?

A. In an organization of that size, I couldn't say.

Q. As a matter of fact, all of the expenses for the maintenance of that house since 1925 have been paid by the Campbell Soup Company?

A. Some of the expenses are paid by the Campbell Soup Company and then billed to the tenant.

Q. You mean billed to Mr. John T. Dorrance?

A. Billed to Mr. Dorrance. No, they would be billed to Mrs. Dorrance.

[fol. 470] Q. How long a lease was given on the property?

A. I don't know what the present lease is. I think it is year to year.

Q. Year to year lease?

A. That is my impression, but I can't be sure of it.

Q. Now, you recognize this picture, I suppose, that is exhibit 3, is it a picture of Woodcrest, Radnor?

A. I think it is.

Q. Have you been all over or through that house at Radnor?

A. No sir. Not all over it. I have been in the rooms on the lower floor and some of the rooms on the upper floors. But not all of them.

Q. You of course went to the house at Pomona farms, Cinnaminson, to visit your mother when she was sick?

A. Yes.

Q. She was brought there from where?

A. From Cape May where she had been visiting my brother, Dr. George Dorrance.

Q. Where was her home before she went to live, during the last years of her life, at Pomona farms?

A. Her last permanent home was at the Wellington Apartments.

Q. Philadelphia?

A. At 19th and Walnut Streets, and then she gave up that former residence and traveled with my sister who is no longer living. They went to South America and when she returned from South America my sister was in ill health, suffering an accident and my mother and sister went to Cape May to visit my brother Dr. George Dorrance. My sister's health didn't improve and she went to Pomona [fol. 471] farms with my mother and both continued there until their respective deaths.

Q. They both went there together?

A. Merely my mother was looking after my sister.

Q. They both went there together to live?

A. That is my recollection.

Q. Do you recollect about when that was, Mr. Dorrance?

A. In a general way.

Q. I don't expect any witness to be able to give me exact dates of matters years ago?

A. It was in the fall of 1927 or 1928. But I am not certain.

Q. When did your mother die?

A. My mother died in 1929.

Q. In January?

A. Yes, it was in January.

Q. When did your sister die?

A. About six months prior to that time.

Q. Now at any time while your mother and sister were there did your brother, Dr. John T. Dorrance and his wife and children regularly occupy that house. Did they?

A. My brother and his wife were there at frequent inter-

yals. But I don't recall when I was there that the whole family, that is my brother and his wife and his children, were in the house simultaneously. I don't think there was room.

Q. What you mean, when you say your brother and his family were there frequently, that they came there from the place at Radnor and made periodical or frequent visits to Cinnaminson, that is what you mean?

A. I don't know whether that is true, Mr. Gray.

[fol. 472] Q. What I mean is that — didn't have there a large corps of servants regularly occupying Cinnaminson and living at Radnor occasionally, but what they did was to live at Radnor and visit Cinnaminson occasionally?

A. I don't know.

Q. Why don't you know?

Mr. Hannum: I object to that.

Mr. Gray: Let me put the question.

Mr. Hannum: I object to the question: Why don't you know?

Mr. Gray: I haven't put it yet.

The Court: Objection overruled. Exception.

(Bill sealed for Executors.)

By Mr. Gray:

Q. How is it with all the other information which you have been able to give with respect to the movements of your brother and so on in response to Mr. Hannum's questions that you can't tell me what I ask you?

A. How is — I can't answer that question?

Q. Yes. You gave me two answers that you don't know — to two questions that I put to you about your brother's habits.

A. It is my belief that my brother and his wife were frequently at Pomona farms and I presume that they went there more than may be they otherwise would have gone to see my mother and sister. I had assumed that my mother and sister being in the house and both being in ill health had crippled the use of Pomona farms both for entertain-

[fol. 473] ment and other purposes. But I was not there frequently when my brother and his wife came to see my mother. It was by coincidence if we called at the same

time. That is why I cannot answer with assurance why they came.

Q. They called and you called. They called at times and you called at times?

A. Yes.

Q. Their habitation at that time was Woodcrest, Radnor?

A. No, sir. I don't know whether it was or not, no.

Q. I am not talking about the legal question of legal domicile——

The Court: He has answered the question, hasn't he. He says he doesn't know.

Mr. Gray: I am trying to find out whether I can refresh his memory to the point of having him know.

By Mr. Gray:

Q. Mr. Dorrance, I am trying to be perfectly proper in asking my questions of you, isn't it a fact, that where their habitation was, where they regularly returned from the other places that they may have been visiting, was Woodcrest, Radnor, Pennsylvania?

A. No, sir.

Q. It was not?

A. No, sir.

Q. Where do you say their regular habitation was?

A. Upon returning from Jamestown and from Bar Harbor I recall distinctly that Dr. Dorrance and Mrs. Dorrance and their children went to Pomona Farms, Cinnaminson.

[fol. 474] Q. For how long?

A. For a period of a week or two weeks, sometimes longer.

Q. Then where did they go?

A. To Woodcrest, Radnor.

Q. Now, didn't they go to Cinnaminson before they went to Woodcrest in order to allow Woodcrest at Radnor to be put in proper shape for them?

A. I haven't any way of knowing that.

Q. During the time in Cinnaminson from 1925 until your brother's death—by the way I suppose you were there at the time of your brother's death, at the time your brother died?

A. I was there a few minutes afterwards. I wasn't there at the time that he died.

Q. Were — there during the time that he was ill, just preceding his death?

A. Yes. I came out frequently during the week before his death.

Q. Do you know where he was taken sick or where he was when he was taken sick?

A. He hadn't been well all that summer.

Q. I mean taken specially sick so that he had to be taken somewhere and put to bed?

A. I don't think there was a specific time that you could describe as a time he was taken sick.

Q. Was he taken away from the Campbell Soup Company in Camden by conveyance to Cinnaminson or Pomona farms?

A. Not to my knowledge.

Q. You say that is not so?

A. I couldn't say it is not so. But it is not my impression that it is so.

Q. Since 1925, at any time, how many servants have you [fol. 475] known to be there in the house at Pomona farms, Cinnaminson, New Jersey?

A. I believe there were four maids. I think there were. I think one of the farm hands was sleeping in the house, but he wasn't a servant—so there would be a man in the house.

Q. Can you name the four maids?

A. No, sir. I am not sure that I could recognize them.

Q. Can you name any one of the four maids?

A. Give the name of any one of the four?

Q. Yes.

A. No, sir.

Q. Did you ever see any one of them doing any work or were you just under the impression that there were four maids?

A. Yes, I am particularly conscious of one maid who was considerate of my mother. She was an elderly woman. But I don't think I ever called her by name.

Q. You say your mother died in January, 1929?

A. Yes.

Q. When did your sister die?

A. About six months earlier.

Q. I direct your attention to the period of time from 1929 in January, your mother and sister both being dead at that time, to the time your brother, John T. Dorrance died on

September 21, 1930, and ask you if you recall any maids there during that period of time?

A. I recall there were maids in the house. But I have difficulty remembering as to the number. But I don't remember their names.

Q. Isn't it a fact that the only person that was there in the character of servant in the house was the woman by [fol. 476] the name of Bridget Kane who was a caretaker?

A. No, sir. There were three or four there all the time.

Q. Three or four, but you don't remember their names? Do you remember how many servants they ever had at Woodcrest?

A. No, sir.

Q. Have you any idea?

A. No, sir.

Q. Not the slightest?

A. Yes, I have the slightest idea—there must be many more than four to take care of that house.

Q. Can you describe the inside of that house to the Court?

A. Which house?

Q. Woodcrest?

A. Yes.

Q. Will you do so?

A. It is a gray stone house, quite large, large entrance hall extending up to the second floor with a balcony surrounding it. Off to the right are four rooms, two small rooms and one large living room having the fire place. Off to one end of that is a small— In the other direction there is the dining room and the breakfast room. And I am not familiar with the arrangement beyond of the kitchen.

Q. In other words, the kitchen and other things way beyond that, you cannot detail your description?

A. I have never seen them. I can't give you great detail on the second floor. I am familiar with only three or four rooms.

Q. How many rooms are on the second floor, bed rooms and baths?

[fol. 477] A. I don't know. I have been in three but I know there are a number more than that.

Q. How many floors to the building?

A. I have only been to two, but I think there are three.

Q. You know they have at least fifteen or sixteen servants?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. How many would you say that you know they have?

A. I don't recall any of them by name.

Q. I won't ask you to do that.

A. I think I know that there were four, perhaps five. I think there must be more in a house of the size of that one. I have seen only three or four.

Q. You know there is a night watchman?

A. I know there was one.

Q. You know there is a gardener?

A. I don't remember the gardener. I presume there is a gardener.

Q. You know there are two chauffeurs?

A. I know only one.

Q. You know there is a butler?

A. Yes.

Q. How many maids do you know that there were in the house?

A. I don't think I know. I don't recall ever seeing any maids.

Q. You never saw any of them?

A. No, sir.

Q. You saw them in Cinnaminson?

A. Yes.

[fol. 478] Q. You mean the house at Woodcrest, Radnor, that the maids could be around without your seeing them?

A. No, sir. But at dinner the butler served and I didn't see the maids. Whereas at Cinnaminson the maids served.

Q. You related a conversation with your brother in which, out of a clear sky, I think you put it, or an expression similar to that, he said something to you as to his estate. When was that conversation?

A. Sometime in 1928.

Q. You related another conversation when he spoke of it being a long run out to Radnor. When was that conversation?

A. It was along about that time or perhaps a little later. It was either in 1928 or 1929.

Q. Now then you told us that you were considering buying a place and building up near your brother at Cinnaminson.

A. Yes.

Q. Did you buy the place?

A. No, sir.

Q. You went and consulted your brother first to find out if he was going to stay or retain Cinnaminson?

A. Not only that. My brother was twenty years older and I looked to him for the head of the family for advice on such matters.

Q. But you also told the court——

Mr. Hannum: Have you finished?

A. And among other things I asked him about his intention because it would affect the arrangement of the house that I then proposed to build. But he was very positive in his reply that he planned to continue to live there forever.

[fol. 479] By Mr. Gray:

Q. And notwithstanding his positiveness, you didn't build?

A. I haven't built yet.

Q. By the way, prior to 1925, at the Cinnaminson house, how many servants did they have?

A. The same number, as far as I know.

Q. The same number? Would you say they didn't have more?

A. There were nurses and governess, servants also, who were there then.

Q. I won't refer particularly to those who had the care of the children for naturally they would go wherever the children and the family were. But those that I refer to are those that are employed to be generally or regularly around the house?

A. My impression would be that there were the same number.

Q. That there were no more. I think you said Woodcrest was closed during the summer. Isn't it a fact that Woodcrest has not been closed during any summer but is open and servants in it while your brother and his wife were at Bar Harbor?

A. My impression was it was always closed up while my brother was at Bar Harbor.

The Court: Let him finish——

Mr. Gray: You have finished?

A. No, sir. I had more to say.

By Mr. Gray:

Q. Say it.

[fol. 480] A. I know that the rugs were all rolled up before they left and that the house was in no condition for occupancy and that the servants needed transporting to Bar Harbor.

Q. Took all the servants to Bar Harbor?

A. I won't say that all of them, because transportation was required for a number of them. But I wasn't informed as to the details of my brother's household.

Q. Where did your sister-in-law, Mrs. Dorrance, spend this summer, 1931?

Mr. Hannum: Is that after Doctor Dorrance's death?

Mr. Gray: Yes.

Mr. Hannum: He is asking the witness as to where Mrs. Dorrance spent this summer after Dr. Dorrance's death. I object.

The Court: Objection is sustained.

Mr. Gray: Let me tell my reason why I think it is material—material only in this respect: This witness has said that the rugs in the summer are rolled up and the conditions are such that the servants couldn't stay there. I want to show by this witness, if he will state it, that the conditions were the same this summer, rugs were rolled up and everything else when they went to Bar Harbor but that the house was still open and the servants therein.

The Court: How does that effect the question of domicile?

Mr. Gray: It affects the question whether the conditions were that way during the other summer, because your Honor [fol. 481] permitted him to so testify to hearsay knowledge. All of that testimony is on hearsay over my objection. I am compelled therefore to cross-examine with respect to it. Therefore, I am endeavoring to show that he doesn't know anything about it.

The Court: Objection is sustained. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Gray:

Q. You said something about your brother going to Cinnaminson part of every month. What part did he usually go to Cinnaminson?

A. By that answer I mean that he went at intervals of every three or four weeks. I don't know that there was any time in the month he chose.

Q. You mean that is during the winter?

A. During the winter; and the summer he was there more frequently.

Q. But during the winter time when he went down to Cinnaminson at intervals of every three or four weeks, where was he the rest of the time?

A. Much of the time he spent at Radnor—Woodcrest.

Q. Aside from the few times that you saw your brother at Pomona farms at Cinnaminson, all the other occasions that you have given about the presence of your brother and his family at Cinnaminson you testified to because of what he told you?

A. I saw him quite frequently at Cinnaminson.

Q. I am going to let you tell me the number of times that you saw him there, actually saw him in the house at Cinnaminson living there—not just when he came up to the farm [fol. 482] and go in the house for some purpose—from 1925 until his death in 1930?

A. My answer must be approximate—25 or 50 times.

Q. And any other times that you testified to beyond that were what you learned from other sources?

A. I knew of his movements because I saw him every day in business.

Q. I say what you learned from other sources, either from him or other people?

A. Yes.

Q. Did you have anything to do with the purchase of the house at Woodcrest, Radnor?

A. No, sir, nothing.

Q. Do you know what your brother paid for it?

A. No, sir.

Mr. Hannum: I object.

The Court: He said no.

Mr. Gray: That is all.

By Mr. Hannum:

Q. You spoke of your brother and his various trips to different places, are you able to tell us of your own knowledge or from what he told you, how many trips abroad he made each year?

Mr. Gray: That is objected to. First, it is totally immaterial and irrelevant; secondly, because it asks this witness to testify to what he learned from other persons.

The Court: Objection sustained. Exception.

(Bill sealed for the Executors.)

[fol. 483] By Mr. Hannum:

Q. Do you know of your own knowledge how frequently he went abroad each year?

Mr. Gray: That is objected to because of his own knowledge he could know only by accompanying him.

The Court: He may have gone with him. I don't know. Objection is overruled. Exception.

Mr. Gray: I ask that that be found out first.

The Court: Objection is overruled. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. Answer the question.

A. When my brother was away, when he was abroad between 1920——

Mr. Gray: I object to this answer because it is not responsive.

The Court: He hasn't answered. Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He went every year, or almost every year. I know because it was my duty to send him cablegrams twice a week.

Q. When did he go?

A. It was in the spring of the year, in May frequently, and he returned sometime in June.

Q. Every year from when until when?

A. I can't remember a year between 1920 and 1930 when he didn't go.

[fols. 484-486] By Mr. Gray:

Q. Did he go alone every year?

A. No, sir, he didn't go alone.

Q. Did he go alone any years?

A. No, sir.

Q. Family all with him?

A. Mrs. Dorrance was with him always so far as I know.

Q. That was a pleasure trip, of course?

A. Sometimes pleasure; sometimes a mixture of business and pleasure.

Q. Such trips however as a man in his standing could afford to make if he felt like making them at any time?

A. Yes.

Q. He didn't take the servants with him?

A. I wouldn't know that. I presume he would take his valet with him.

Q. He wouldn't take a staff of servants from Woodcrest with him?

A. I am sure not.

Mr. Gray: That is all.

Mr. Hannum: That is all.

[fol. 487] TESTIMONY OF WILLIAM D. LIPPINCOTT

Pages 174-a to 230-a, inc.

WM. D. LIPPINCOTT, sworn.

By Mr. Hannum:

Q. Judge Lippincott, what is your full name?

A. William Duncan Lippincott.

Q. What is your profession?

A. Counsellor at law in the State of New Jersey.

Q. For how long?

A. I was admitted to the bar in February, 1894.

Q. Where?

A. Moorestown, New Jersey.

Q. Have you occupied any official position in New Jersey?

A. I have.

Q. What was that and for how long?

A. I was judge of the Court of Common Pleas of Burlington County, New Jersey, from April 1, 1914, to April 1, 1919, five years.

Q. Did you know Dr. John T. Dorrance?

A. I did.

Q. When did you first become acquainted with him?

A. About 1910 or prior to 1910.

Q. What association from that time, or shortly after that time did you have with Doctor Dorrance?

A. After 1910 I was the counsel for the Campbell Soup Company or rather at that time of the Joseph Campbell Company, of which Dr. Dorrance was an officer and as a result of my association with the Joseph Campbell Company I became well acquainted with Dr. Dorrance.

Q. Did you ever occupy any professional association with him or have any professional association with him personally?

A. I was his personal counsel from at least 1912.

[fol. 488] Q. Until when?

A. Until the day of his death.

Q. You say that your first association with this business was with the Joseph Campbell Soup Company or Joseph Campbell Company?

A. Joseph Campbell Company.

Q. And that company eventually became the Campbell Soup Company?

A. It became the Campbell Soup Company in 1922.

Q. In 1922, how did it become the Campbell Soup Company?

Mr. Gray: I will object to that. We have heard from the other witnesses all about the Campbell Soup Company.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

Mr. Gray: Will your Honor allow my objection to cover all the questions along that line?

The Court: I will let your objection cover all that he says on that line.

A. In the latter part of 1922 there was a reorganization of the Joseph Campbell Company, as a result of which the Campbell Soup Company was formed and from December, 1922, up to the present time the company has been the Campbell Soup Company.

By Mr. Hannum:

Q. Is it a New Jersey Corporation?

A. Yes.

Q. Were you acquainted with Dr. Dorrance's stockholding in the Campbell Soup Company?

[fol. 489] A. I was after about 1915.

Q. From 1915 until the time of his death, what did they consist of in stockownership?

A. He was the sole owner. There were qualifying shares in the hands of the directors.

Q. You said that you were Doctor Dorrance's personal counsel from when?

A. From at least 1912.

Q. Until the time of his death?

A. Until the time of his death.

Q. How closely associated were you with him in connection with his affairs?

A. He consulted me on the company's business and also on his private business.

Q. What were his activities for and with the company of which he owned personally?

A. He was President of the Company and the operator of the company.

Q. Did Doctor Dorrance say anything to you at any time regarding his purpose and intention as to the continuance of the Campbell Soup Company after his death?

Mr. Gray: That is objected to as immaterial and irrelevant.

The Court: I will admit and give you an exception.

(Bill sealed for the Commonwealth.)

A. He did.

By Mr. Hannum:

Q. What did he say?

A. He said that he wanted——

[fol. 490] Mr. Gray: That is objected to as hearsay.

The Court: Your objection covers it all.

(Bill sealed for the Commonwealth.)

A. He said that he wanted to keep the Campbell Soup Company intact in the business, that is, his holdings of stock.

Q. That is his entire holdings in the company?

A. Yes.

Q. Did he discuss with you plans for doing that legally, which plans were to be effective after his death?

A. Yes.

Q. What was his discussion with you and you with him regarding that?

Mr. Gray: My objection covers all this. It is hard for me to determine how far it is going. Therefore, I have got to use my judgment. I will have to make another objection.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. Will you read the question.

Q. (Question read.)

A. There were a number of discussions on that subject, Mr. Hannum, running from prior to May of 1925 when he made a will, and running through the summer of 1925 when he made another will, I think in July—I have the wills here, and then there were discussions upon that subject also prior to the final will, the last will, which was made in May of 1928.

[fol. 491] By Mr. Hannum:

Q. Well, did he say anything to you about maintaining the integrity of this business for any member of his family eventually?

Mr. Gray: Objected to as leading.

The Court: I think that objection is good. I sustain that objection.

Mr. Hannum: Because it is leading?

The Court: No, because it is immaterial. Exception.

(Bill sealed for the Executors.)

By Mr. Hannum:

Q. You said something about a will made in 1925?

A. There was a will made in 1925.

By the Court:

Q. Were you consulted about it?

A. Yes, I was consulted about it.

By Mr. Hannum:

Q. As to this feature of it——

A. We had a number of conferences about the feature as to the accumulation of income; as I recollect it first came up in connection with the will of 1925.

Q. What did Doctor Dorrance say to you regarding what was his purpose and intention and what did you say to him?

Mr. Gray: That is objected to.

[fol. 492] The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. Doctor Dorrance said to me that he wanted to have a plan devised whereby the income of his estate over and above such income as might be necessary for the proper maintenance and support of his wife and his children—that the excess of the income might be applied to the payments of the inheritance tax, both Federal and State.

By Mr. Hannum:

Q. What reason, if any, did he give you for desiring to do that?

A. He said that he wanted to arrange it so that the income might be accumulated and he wanted to give the executors the right to borrow money to pay the taxes immediately, and then that the estate might be built up; and give them power—he told me to put in the will a power to hypothecate his stocks in the Campbell Soup Company in such a position that it wouldn't have to be sold by his executors in order to pay his taxes.

Q. For what purpose did he want to keep the Campbell Soup Company in that order for the estate?

By Mr. Gray: That is objected to.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He told me that he wanted to keep that stock——

By Mr. Hannum:

Q. Why?

[fol. 493] A. He told me that he wanted to keep that stock for the benefit of his family.

Q. Who?

A. He directed me to put a provision in his will that his son should be given an opportunity to learn the business of

the Campbell Soup Company and prove that he was qualified to take his place in the business and he wanted to keep the stock intact, if it was possible to do so, in order that his family might have the benefit of the company and in order that his son, if he qualified, might take his place.

Q. Is that son still living?

A. Yes.

Q. What is his name?

A. John T. Dorrance, Jr.

Q. Now when he told you that, what if anything did you say to him about it so far as New Jersey or other states were concerned?

Mr. Gray: I object. I must object to this continuous leading. His questions are leading from beginning to end. Occasionally he asks a question that is not leading; and I object to the materiality of the question besides.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

Q. (Question read.)

A. I told him that the plan of the accumulation of income which he had proposed was good; it could be carried out in New Jersey. I told him that it couldn't be carried out in Pennsylvania and I told him that it couldn't be carried out in New York. But it was perfectly feasible in New Jersey to be carried out.

[fol. 494] By Mr. Hannum:

Q. Go on and tell us any other discussion that you had with him on that subject, Judge Lippincott, or about preserving the integrity of this estate?

A. In connection with the drawing of his last will, I told Dr. Dorrance that in Pennsylvania his wife might, if she desired, take against the will, and might instead of taking the provisions which are made for her—might require the allotment to her of one third of the personal estate, as I was informed.

The Court: How about New Jersey?

By Mr. Hannum:

Q. What about the law of New Jersey, as to that?

A. In New Jersey the wife has no vested interest in the personal estate of her husband.

Q. Then she couldn't claim against the will?
A. She can not claim against the will except as to real estate.

The Court:

Q. I mean as to personalty?
A. No, sir.
Q. If she did she wouldn't get anything?
A. No, sir. She couldn't get anything if the will was valid.

By Mr. Hannum:

Q. What did you tell Dr. Dorrance as to that what you have just spoken of?

The Court: He just said that he told him.
[fol. 495] Mr. Hannum: I didn't hear it.

Q. Then I am asking if he told Dr. Dorrance that last?
A. Yes. There were many discussions.
Q. Go on and tell us about it.

Mr. Gray: That is too general. I object to it.
The Court: That won't do. Ask him what you want to ask him.

By Mr. Hannum:

Q. You said that there were many discussions on this particular subject, now then——
A. There were many discussions, Mr. Hannum, relating to his wills and especially the last will of 1928. The will was a very complicated one and there were a great many provisions which he directed should be inserted in the will, which related to the Campbell Soup Company and especially with relation to the possibility of a sale. He directed me to make the various—or insert the various clauses which are inserted in that will relating to selling the Campbell Soup Company and at the same time restricting the sale falling short of directing the executors not to make a sale. In other words, there was a provision in the will, which after all, gave to the executors the right to make the sale but he enjoined upon them——
Q. What provisions are you talking about, Judge?
A. There are a number of provisions.

Q. What particular one are you talking about now?

A. If I may have a copy of the will before me, I will tell you.

[fol. 496] The Court: Here you are. Did you write that will?

A. Yes.

Q. In accordance with his directions?

A. Yes. Entirely according to his directions, making the 19th section of the will to the 23rd section of the will, three clauses, which relate to the sale of the Campbell Soup Company.

The Court: What has that to do with the domicile question?

By Mr. Hannum:

Q. Has that anything to do with the domicile question?

Mr. Gray: I object to the witness determining whether that has anything to do with the domicile question. I object.

By the Court: Certainly not.

By Mr. Hannum:

Q. I am talking about whether these sections to which you point have anything to do with this domicile question?

Mr. Gray: I object to that.

By Mr. Hannum:

Q. Do they refer to it in any way?

By Mr. Gray: Wait.

[fol. 497] The Court: I don't think that he can determine or interpret them.

Mr. Gray: Then your Honor rules it is not evidence.

By Mr. Hannum:

Q. Will you refer to the section of the will regarding its probate?

A. That is the 33rd section of the will.

By the Court:

Q. Was that put in at his direction?
A. It was.

By Mr. Hannum:

Q. What was your talk with him about that?

Mr. Gray: Objected to.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. Mr. Hannum, we—the talk about that was dated back to the month of December in 1925. That was after he had bought the Radnor property.
Q. After what?
A. After he had bought the Radnor property. He directed me to put a codicil, prepare a codicil and put it to his will, which was dated in July, 1925, in which his executors were required to make application for the probate of his will either to the surrogate of the County of Burlington, or to the Ordinary of the State of New Jersey within thirty days after his decease.

[fol. 498] Mr. Gray: What are you doing, just reading the clause?

A. No, sir. I am not reading the clause.

The Court: He is telling what is in it.

A. I am stating what was in it.

Mr. Gray: I object. The will speaks for itself. Judge von Moschzisker says you are talking about a prior will.

A. Prior will?

Mr. Gray: Made in 1925. Subject to the objection that I made before.

A. Or rather a codicil to the prior will.

By Mr. Hannum:

Q. Tell us what Dr. Dorrance said in regard to it?

Mr. Gray: I object to that. Your Honor makes the same ruling?

The Court: Yes.

Mr. Gray: What he said about some prior will that we haven't heard about.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. To place in the codicil a provision that if his executors should not make application to the surrogate of Burlington [fol. 499] County or—I think he said in that—to the Ordinary of the State of New Jersey within sixty days—he said in that—from the date of his death, that the executors so failing or refusing to present the will for probate, their appointment should be revoked.

By Mr. Hannum:

Q. Did he state to you any reason for that provision?

Mr. Gray: I object to that as immaterial and irrelevant.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He told me that he wanted his will admitted to probate promptly in the State of New Jersey.

By Mr. Hannum:

Q. Did he say why?

Mr. Gray: That is objected to.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

The Court:

Q. If he did, state why?

A. He told me that is what he wanted, that he wanted it admitted to probate promptly, in connection with that.

[fol. 500] By Mr. Hannum:

Q. Yes.

A. He told me that a number of persons about that time, or just prior to that time, asked him if he was a Pennsylvania resident.

Mr. Gray: That is objected to. He has told what Mr. Dorrance told him and now he is going to tell what somebody else told Mr. Dorrance, or what Mr. Dorrance, said that somebody else told him.

The Court: That is evidence in a case of this kind. I will admit and give you an exception.

(Bill sealed for the Commonwealth.)

A. He told me that he had said to them that he wasn't a Pennsylvania resident, that he didn't intend to leave New Jersey and he wanted me to put in his will or codicil to his will which was to insure the prompt probate of his will in New Jersey, which I did.

By Mr. Hannum:

Q. That is regarding what will?

A. That was the will of August, 1925, and the codicil was prepared the latter part of December.

By Mr. Hannum:

Q. What about the will of 1928, the particular will in question?

Mr. Gray: Well, what about it? What about it, is not a legal question.

[fol. 501] By Mr. Hannum:

Q. What did Doctor Dorrance say?

A. In the preparation of the will of 1928 he told me to insert a clause to which I have referred which was in the codicil of December, 1925, but that he wanted the time limit made, I think, it is thirty days instead of sixty days as in the codicil.

Q. He changed the time, in other words?

A. Yes.

Q. Shortened it?

A. Yes.

Q. Were you in any ways associated with Dr. Dorrance's purchase of the Radnor property?

A. I was.

Q. What was that association?

A. I was present at the time of the settlement for the property.

Q. May I ask you right there: in whose name the title was put?

Mr. Gray: I object to that. If my friend follows it up by producing the deeds we will have the whole information.

The Court: If he knows he can state.

(Bill sealed for the Commonwealth.)

A. My recollection is that the title was taken in the name of John T. Dorrance and Ethel M. Dorrance, his wife.

By Mr. Hannum:

Q. Estate by entirety?

A. Yes.

[fol. 502] The Court: You will follow it up by producing a deed?

Mr. Hannum: Yes.

Q. That was in 1925?

A. 1925. My recollection is it was in the spring of 1925.

Q. After the purchase of the property at Radnor did Dr. Dorrance ever express to you his intention regarding his residence or domicile?

A. He did, many times.

The Court:

Q. What did he say?

Mr. Gray: I object.

By Mr. Hannum:

Q. What did he say?

Mr. Gray: Will your Honor rule on that. I have objected.

The Court: I will admit it and give you an exception. Overruled your objection and give you an exception.

(Bill sealed for the Commonwealth.)

A. I first had a conversation with Dr. Dorrance with reference to the Radnor property at about the time of his purchase and he asked me whether the purchase of that

property would make any difference to his residence in New Jersey. And I told him that the matter—he said, legal residence——

Mr. Gray: I object to what this gentleman told him.
[fol. 503] The Court: Objection overruled. Exception.

A. I told him that residence was largely a matter of intention and if he retained his Cinnaminson property with the intention of making that his home, it wouldn't make any difference—the purchase or occupancy of the Radnor property would not make any difference to his residence in New Jersey.

By Mr. Hannum:

Q. You say that is substantially the first conversation with him. What was the next conversation?

A. The next conversation, which I recollect, I think occurred in connection with the preparation of the will of May, 1925. We had a number of conferences with reference to that will and in relation to that I told him that since his previous conversation I had examined the law of domicile in New Jersey and that if he retained his New Jersey property, and had no intention to abandon that property as his home, his domicile was clearly, in my opinion, in New Jersey.

Q. Did he say anything to you about his intention to abandon it?

Mr. Gray: That is objected to.
The Court: Or not to abandon.

The Court:

Q. Did he tell you what was his intention as to his residence?

Mr. Gray: That is objected to.
The Court: Objection overruled. Exception.

[fol. 504] (Bill sealed for the Commonwealth.)

A. Yes. He said that he intended to retain his Cinnaminson home; that he intended to keep it always open; that he would have a quota of servants there, and that he would always be there in the summer; and that he would come

there in the spring for a time and in the fall. That is at that time he told me that.

By Mr. Hannum:

Q. What was your next conversation with him regarding his home in New Jersey?

Mr. Gray: That is objected to.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. The next conversation that I recollect in relation to the matter came in December of 1925. That was after the Radnor property had been occupied by him and he asked me—that was in the same conference as referred to the codicil and his will—he asked me whether his wife had the right to take her legal residence in Pennsylvania and he have his in New Jersey. And I told him, at that time, as I understood the law of domicile, the domicile of the wife followed that of her husband, but there had been quite a little talk in New Jersey to give the wife the right to take a domicile wherever she pleased. But I told him that the whole matter might be covered by an agreement. And he said that could be easily done and he gave me the notes of an agreement which he wanted me to prepare. He said that Mrs. Dorrance would sign such an agreement.

[fol. 505] By Mr. Hannum:

Q. I show you Exhibits "D" and "E", are they the agreements you prepared, one for Mrs. Dorrance and one for Mr. Dorrance, covering the question which you have just testified to?

A. They are.

Q. When were they signed?

A. My recollection is that they were signed in Dr. Dorrance's office in Camden.

Q. Will you turn to the signatures, please, do you know Dr. Dorrance's signature?

A. I do.

Q. Is that it?

A. It is.

Q. Do you know Mrs. Dorrance's signature?

A. I do.
Q. Is that it?
A. Yes.
Q. On Exhibit "D"; you just looked at Exhibit "D"?
A. On both.
Q. On both Exhibits "D" and "E", is that correct?
A. Yes, they are duplicates.

Mr. Hannum: I desire to offer these in evidence. I don't know whether your Honor desires to see them——

Mr. Gray: I object to them. I take it that my friend is only offering one of them. They are duplicates of each other; I take it that he is only offering one of them.

Mr. Hannum: I am offering each one.

Mr. Gray: You can offer them both. I am putting my ob- [fol. 506] jection on this ground: that no agreement in the language contained in this agreement—I have seen a copy of it—is admissible in evidence in this case, even though it is offered for the purpose of showing the declaration of intention of John T. Dorrance, the testator, at the time that this agreement was executed.

The Court: Objection is overruled. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. At any time at or about the execution of these agreements was there any law passed in New Jersey with reference to that situation?

Mr. Gray: That is objected to. If you will produce it and let me look at it I might agree with you, if it has any relevancy to the case that that is the law. I don't know even what law you are talking about. Do you mean a law that authorizes a wife to have a separate domicile.

Mr. Hannum: That is what I said.

Mr. Gray: Do you mean you are going to produce a law authorizing husband and wife to have separate domiciles?

By Mr. Hannum:

Q. Did I understand it was passed or threatened at the time this agreement was drawn?

Mr. Gray: That is objected to. The witness cannot understand what he understands.

The Court: What do you propose to prove?

[fol. 507] Mr. Hannum: I propose to prove that about the time this agreement was drawn, as I understand from the witness's testimony, there was a law either passed or threatened to give the wife the right to have a separate domicile.

The Court: I will let you prove that. That is some evidence. I overrule your objection.

Mr. Gray: I agree if he proves this in the proper way, it is only a question of whether it is relevant.

The Court: He can say there was one, but that doesn't prove the law. He has got to prove the Act of Assembly.

Mr. Gray: Does Your Honor recall that his question was: Passed or threatened.

Mr. Hannum: Passed or suggested.

Mr. Gray: I object to the question.

The Court: If there was any such law he can produce it. He said "suggested," Mr. Gray, not "threatened." Can it make any difference anyhow, Mr. Gray. A paper of this kind is certainly evidence of a man's intention to retain his residence in the place where he is living.

Mr. Gray: I think not. But we have been right at the point where we are ready to argue that. If at any time your Honor wants to hear argument on the question of the inadmissibility of these declarations of intention I will be very glad to present it.

The Court: Alright; I will admit it now. If it isn't evidence, I will strike it out. Exception.

(Bill sealed for the Commonwealth.)

[fol. 508] By Mr. Hannum: Will you go ahead. (These are in evidence.)

Mr. Gray: Your Honor admitted these. These is no question. He told him to go ahead.

The Court: Ask him the question you want answered.

Mr. Hannum: I did ask him a question. I will ask it again.

By Mr. Hannum:

Q. Was there any law suggested in New Jersey legislature relative to the separate domicile of a wife?

Mr. Gray: I object to that, as being totally immaterial and irrelevant whether there was such a law or not suggested.

The Court: I will admit the question and grant you an exception.

(Bill sealed for the Commonwealth.)

A. A law was suggested but I don't know whether it had been suggested to the legislature. It was passed in 1927.

The Court:

Q. At the time this agreement was entered into then there was no such law?

A. No, sir.

By Mr. Hannum:

Q. Do you know of your own knowledge anything regarding Dr. Dorrance's voting in New Jersey?

[fol. 509] Mr. Gray: To save time, I agree to stipulate——

Mr. Hannum: Answer the question.

Mr. Gray: Counsel on the other side asked me to enter into a stipulation. I said I would in connection with that, to save them from bringing witnesses here. Now he is touching on the same subject. My only desire is to save time.

Mr. Hannum: This is another feature.

Q. (Question read.)

A. I never saw him actually vote but he mentioned to me——

Mr. Gray: I object to what he mentioned.

The Court: I think it is evidence. Overruled objection. Exception noted.

(Bill sealed for the Commonwealth.)

A. He mentioned to me on several occasions that he had been up and voted.

The Court:

Q. He didn't say where?

A. At Cinnaminson.

The Court: That is very slight evidence; but still it is a little.

By Mr. Hannum:

Q. Had you finished?
A. No, sir.

Mr. Gray: He must have finished because he has told us all that was responsive to the question. I object to his [fol. 510] stating anything else until you put another question.

By Mr. Hannum:

Q. Are you finished?
A. That is all I know about his voting. I received a letter from Dr. Dorrance with reference to voting, at a later date.
Q. I show you Exhibit "F," is that the letter to which you referred as having been received from Dr. Dorrance regarding voting?
A. Yes.
Q. Is that Dr. Dorrance's signature to the letter?
A. It is.

Mr. Hannum: If the Court please, I desire to offer this letter in evidence.
Mr. Gray: I object to it, if your Honor please.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

Mr. Gray: Will your Honor look at the letter first.
The Court: The letter is admitted. Objection is overruled.
Mr. Gray: Note an exception. Your Honor admitted the agreements without even looking at them. Your Honor has overruled my objection to this letter without even looking at the letter to see what it is.
The Court: The place to complain about that is after the case is over.
Mr. Gray: I have to get it on the record.

(Bill sealed for the Commonwealth.)

[fol. 511] By Mr. Hannum:

Q. You have spoken of a will drafted by you for Dr. Dorrance in May of 1925?

A. Yes.

Q. What was his residence given in that will?

Mr. Gray: That is objected to. Where is the will.

Mr. Hannum: We have it here. I will get you to straighten these wills out as they come chronologically.

Q. Is that the one of May, 1925?

A. Yes. Then on the back there is another one, a codicil; that is a codicil.

Q. I show you Exhibit "G"——

Mr. Gray: Let me see it. Are there codicils attached to this?

Mr. Hannum: Yes.

A. One attached, Mr Gray.

By Mr. Hannum:

Q. I show you Exhibit "G", what is Exhibit "G"?

A. Exhibit "G" is a will of Dr. Dorrance dated May 5, 1925.

Q. Is there a codicil attached to it?

A. Yes.

Q. Then Exhibit "G" is a will and codicil?

A. If the codicil is not marked separately, it is, yes.

Q. It isn't marked separately.

A. The codicil was dated May 5, 1925.

Q. Now the will and codicil are both signed by Dr. Dorrance?

A. Yes.

[fol. 512] Q. Did you draw them?

A. Yes, I did.

Q. In each one is his domicile given?

Mr. Gray: That is objected to. That asks for a conclusion of law to start with.

By the Court:

Q. What does the will say with regard to his domicile?

Mr. Gray: I object to that.

The Court: Why?

Mr. Gray: The paper is either admissible or not admissible. If it is admissible it speaks for itself. If it isn't admissible, he can't interpret it.

The Court: That is very true. It is an admissible document. Let it speak for itself.

Mr. Hannum: I offer it in evidence.

Mr. Gray: I object.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. I show you Exhibit "I"; what is that?

A. That is a codicil to the last will and testament of Dr. Dorrance dated May 6, 1925.

Q. Is it signed by Dr. Dorrance?

A. Yes.

Q. Did you draw it?

A. Yes, I did.

[fol. 513] Mr. Hannum: I offer it in evidence.

Mr. Gray: It is objected to.

The Court: I overrule the objection and admit it. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. I show you Exhibit "J"; what is Exhibit "J"?

A. Exhibit "J" is a codicil to the will of Dr. Dorrance dated June 30, 1925.

Q. Did you draw it?

A. Yes.

Q. Did he sign it?

A. He did.

By Mr. Hannum: I offer Exhibit "J" in evidence.

By Mr. Gray: That is objected to.

The Court: Objection overruled.

(Bill sealed for the Commonwealth.)

Mr. Hannum: These papers are all offered—the ones that I have offered as well as the ones that I am going to offer to show the declarations of the decedent regarding domicile.

Mr. Gray: I object. He is stating to you a conclusion of law, not even a declaration of domicile at all.

The Court: I presume they speak for themselves.

By Mr. Hannum:

Q. I show you Exhibit "K"; what is that?
[fol. 514] A. That is a will of Dr. Dorrance, Dr. John T. Dorrance, dated July 30, 1925.
Q. Drawn by you?
A. It was.
Q. Signed by Dr. Dorrance?
A. It was.

The Court: What is that for the purpose of showing his residence? Or what he called his residence?
Mr. Hannum: Yes. I offer in evidence Exhibit "K".
Mr. Gray: I object.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. I show you Exhibit "L"; what is that?
A. That is a codicil to the will of Dr. Dorrance dated October 17, 1925?
Q. Drawn by you?
A. Yes.
Q. Signed by Dr. Dorrance?
A. It was.

Mr. Hannum: I offer Exhibit "L" in evidence.
Mr. Gray: Objected to.
The Court: Objection overruled. Exception.

By Mr. Hannum:

Q. I show you Exhibit "M"; what is that?
A. That is a codicil to the will of Dr. Dorrance dated December 30, 1925.
[fol. 515] Q. Drawn by you?
A. It was.
Q. At his direction?
A. Yes.
Q. Signed by Dr. Dorrance?
A. Yes.

Mr. Hannum: I offer in evidence Exhibit "M."
Mr. Gray: That is objected to.
The Court: Objection overruled. Exception.

By Mr. Hannum:

Q. I show you Exhibit "N"; what is that?

A. That is a power of attorney given by Dr. Dorrance to Heberton L. Williams dated May 15, 1928.

Q. Drawn by you?

A. Yes.

Q. Signed by Dr. Dorrance?

A. Yes, in my presence.

Mr. Hannum: I offer Exhibit "N" in evidence.

Mr. Gray: I object to it.

The Court: What is the purpose?

Mr. Hannum: To show declaration of decedent regarding his residence.

Mr. Gray: You didn't look at it carefully.

The Court: I thought I looked at it.

Mr. Hannum: You had it long enough.

Mr. Gray: It says at its top "I, John T. Dorrance, of the Township of Cinnaminson." I don't think that is a declaration of domicile.

[fol. 516] The Court: Let me see it. This time I will look at it.

Mr. Gray: I wish I could get on the record every time your Honor doesn't look at it.

The Court: I will admit and give you an exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. I show you Exhibit "O"; what is that exhibit?

Mr. Gray: In order to save time and I have offered Mr. Hannum several suggestions but he wouldn't adopt them. They are all different powers of attorney. The only purpose he is offering them for is for the purpose of showing declarations contained therein that the man lived in Cinnaminson, County of Burlington. Subject to my objection that they are not relevant, he may offer them for that purpose.

The Court: Your objection is overruled. I am admitting them.

(Bill sealed for the Commonwealth.)

The Witness: That appears to be a duplicate——

By the Court:

Q. What is that?

A. That is a power of attorney given by Dr. Dorrance dated May 15, 1928, to Heberton L. Williams.

By Mr. Hannum:

Q. Is it drawn by you and signed by Dr. Dorrance?

A. Yes.

[fol. 517] Q. What is Exhibit "P"?

Mr. Gray: Your Honor will not blame me for loss of time. I agree that these should be offered without identification.

A. That is a duplicate of Exhibit "O".

By Mr. Hannum:

Q. What is Exhibit "Q"?

A. Exhibit "Q" is a power of attorney given by Dr. Dorrance to George M. Dorrance, M. D., his brother.

Q. Signed by him and drawn by you?

A. Yes, dated March 26, 1929.

Q. What is Exhibit "R"?

A. Exhibit "R" is a power of attorney given by Dr. Dorrance to Heberton L. Williams and William D. Lippincott.

Q. Drawn by you and signed by him?

A. Yes. It was drawn by me and signed by him.

Q. What about Exhibit "S"?

A. That is a power of attorney given by Dr. Dorrance to Heberton L. Williams and Wm. D. Lippincott and signed by Dr. Dorrance September 12, 1929.

Q. Did I show you Exhibit "R"?

A. Exhibit "R" is a power of attorney given by Dr. Dorrance to Heberton L. Williams and Wm. D. Lippincott, dated September 12, 1929, signed by Dr. Dorrance.

Q. Exhibit "U"?

A. Is a power of attorney given by Dr. John T. Dorrance to Heberton L. Williams and Wm. D. Lippincott, dated September 12, 1929, and signed by Dr. Dorrance.

[fol. 518] Mr. Gray: If he is contemplating offering them in evidence I would like to examine them. I made you an offer and you wouldn't take advantage of it.

The Court: Are they offered in evidence.

Mr. Hannum: I offer them in evidence.

Mr. Gray: I object to them on the ground that they are irrelevant and immaterial.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

Mr. Hannum: Cross-examine:

Cross-examination:

By Mr. Gray:

Q. You said that you had to do with the settlement for the purchase of the property known as Woodcrest, Radnor?

A. Yes.

Q. Do you mean by that that you had entire charge of that settlement?

A. I attended the settlement, Mr. Gray, at Mr. Hirst's office in Philadelphia.

Q. Representing who, Mr. Dorrance and his wife?

A. Representing them, yes.

Q. Was the settlement actually made there?

A. It was.

Q. Not made at the Bryn Mawr Title and Trust Company?

A. The representative, as I recollect, the representative of the Bryn Mawr Trust Company came to Mr. Hirst's office in Philadelphia.

[fol. 519] Q. From whom was that property purchased?

A. From Mrs. Munn. I don't know her exact name.

Q. How many acres were in it?

A. I don't know.

Q. How much was paid for it?

Mr. Hannum: I object. What importance is it, what he paid for it.

Mr. Gray: It is a very important factor in the case to start with.

The Court: He can answer the question, if you know.

A. I don't know the exact amount. I can get you the settlement sheet.

By Mr. Gray:

Q. I know all about the settlement sheet. I am asking you if you know what was paid for it?

A. Not precisely, no.

Q. Approximately?

A. Aproximately ($350,000) three hundred and fifty thousand dollars.

Q. Wasn't there over $400,000 paid for it?

A. I think not.

Q. How many parcels of property were present at the settlement, out there, near or surrounding Woodcrest?

A. The Munn property.

Q. Do you know whether they purchase other properties there?

A. Yes.

Q. How many altogether?

A. I don't know.

[fol. 520] Q. Do you know what was paid for all the properties in the aggregate?

A. I don't know.

Q. You don't know how many acres were in the Munn property?

A. I don't know. The deed will show.

Q. I know the deed will show. Prior to the time that that property in Woodcrest, Radnor, was bought, you never had any of these discussions that you have testified to with Mr. John T. Dorrance, did you?

A. Prior to that time?

Q. Yes.

A. No, sir.

Q. Right after Mr. Dorrance bought the property known as Woodcrest, Radnor, from the Munns, he came to you and discussed the question of the law of Domicile, didn't he?

A. He did.

Q. And he also discussed with you the inheritance tax laws of the State of New Jersey and the State of Pennsylvania, didn't he?

A. He discussed——

Q. Did he or did he not, please.

Mr. Hannum: Let him answer.

By Mr. Gray: I asked him whether he discussed the inheritance tax laws of the State of Pennsylvania and the

State of New Jersey. I am cross-examining him and he must answer me directly.

Q. He did or did not?

A. No.

Q. Did he discuss with you the personal property tax of the State of Pennsylvania?

[fol. 521] A. Not at that time.

Q. At any time?

A. He discussed——

Q. At any time?

A. Yes, he did.

Q. Did he at any time discuss with you the inheritance tax laws of the state of New Jersey and the state of Pennsylvania. Did he at any time?

A. If you put that question as it is, I will say no.

Q. Did he ever write you about it?

A. No, sir. He discussed with me the New Jersey Inheritance Tax law continuously, but never the Pennsylvania Inheritance Tax Law.

Q. He wanted you to revise them, didn't he?

A. Yes.

Q. He wanted to abolish the Federal Tax laws, if he could, didn't he?

A. I think he did.

Q. He went so far as to endeavor to have an Act of Congress passed eliminating the Federal taxes, didn't he?

A. I don't know.

Q. And tried to have it passed?

A. I don't know.

Q. He was desirous of having the corporation taxes of the State of New Jersey reduced in order that he might save the Campbell Soup Company incidently a large and substantial amount of taxation, isn't that true?

A. No, sir.

Q. No steps made about that?

A. No, sir.

Q. You don't know about that. Prior to 1925, have you [fol. 522] any papers such as you have produced for the date after 1925?

A. I have not. But I have wills, yes.

Q. You haven't brought any of those?

A. Not here, no, sir.

Q. And the first will that you produced here was executed by him on May 5, 1925?

A. Yes.

Q. Was that right after he purchased the Radnor property?

A. I think so.

Q. Don't you know?

A. We haven't the deed here for the Radnor property. The date of the deed will show. I can produce it tomorrow morning.

Q. I know the date of the deed. I want to know if you know it.

A. If you give me the date of the deed I will tell you.

Q. You don't know whether it was after or not?

A. I don't know, but I think——

Q. How long prior to May 5, 1925, was it that he gave you instructions for the purpose of drawing that voluminous will on that date?

A. Several weeks, I think. It was done under pressure, however.

Q. Why?

A. It was a very great change in the plans for the previous wills and it was very laborious work.

Q. Why was it done under pressure?

A. I was under pressure to get it done correctly and properly.

Q. You mean he wanted it done as quickly as possible. [fol. 523] Of course, we always have got to do things properly?

A. Yes.

Q. You say that he never discussed the personal property tax in the State of Pennsylvania?

A. I didn't say that, no, sir.

Q. Did he discuss it?

A. Yes.

Q. When was it he discussed it?

A. After he got notice from some assessor out in Radnor Township of a proposed assessment against him.

Q. You mean of the four mills personal property tax?

A. Yes. That is what you are referring to?

Q. Yes.

A. Yes.

Q. It has been shown in this estate that the inventory of his personal property was 114,000,000 dollars in 1925 and 1926. Was he worth that much money?

A. I don't know, Mr. Gray.

Q. Was it over one hundred million?

A. About that.

Q. Do you know whether he ever paid any inheritance taxes or paid any personal property tax to the State of Pennsylvania?

A. I don't know. I think not. I don't know at all.

Q. Now, when you were discussing that question of his having moved to Radnor, Woodcrest at Radnor, he discussed it with you because he wanted to place himself in the position of wanting your legal advice on not becoming a citizen of the State of Pennsylvania, that is true?

A. He never discussed moving to Radnor with me.

[fol. 524] Q. I said after he moved to Radnor he wanted to avoid becoming a citizen of Pennsylvania if he could and he came to you to discuss how he could, legally?

A. No.

Mr. Hannum: I object to the word "move."

By Mr. Gray:

Q. After he bought the place called Woodcrest at Radnor and went there to live with his family, it was then that he came to you and discussed the question of how he could avoid becoming a citizen domiciled in the State of Pennsylvania and still retain citizenship in New Jersey; isn't that correct?

A. No, sir. He wanted to retain his citizenship in New Jersey.

Q. And not become a citizen of the State of Pennsylvania?

A. No, sir.

Q. That is what he wanted?

A. He didn't want to become a citizen of the State of New Jersey and said so.

Mr. Hannum: State of Pennsylvania, you mean.

A. State of Pennsylvania, I mean.

By Mr. Gray:

Q. We agree on that. He came to you to find out how he could legally avoid becoming a citizen of Pennsylvania?

A. No, sir.

Q. What was it that he came to seek advice about?

A. When the purchase of the Radnor property was under [fol. 525] discussion, he asked me whether it would interfere with his New Jersey legal residence.

Q. Go ahead.

A. And I told him that was largely a matter of intention, and he assured me at that time that he intended to keep his New Jersey home.

Q. You told him it was primarily a matter of intention?

A. Largely a matter of intention, yes.

Q. Largely a matter of intention?

A. Yes.

Q. Now, did that discussion take place prior to the purchase of the Radnor property?

A. About the time.

Q. Well, now, you said when the purchase of the property was under consideration—that leads me to believe it was before that time. Was it or not?

A. It was under consideration—by that I mean, some deal was on. I don't know whether it was before or just after the settlement had been made or the agreement made. It was about that time.

Q. Was it before the agreement, was it before the property was settled for and title taken, while the purchase was under consideration or was it after the deal was consummated that he came to talk to you?

A. I couldn't tell you.

Q. Was it before or after you came to Hirst's office to make that settlement?

A. I couldn't tell you.

Q. Who suggested to him the title to this property should be in the name of both Mr. and Mrs. Dorrance, you?

A. Dr. Dorrance.

Q. Did you advise him that you had investigated the [fol. 526] Pennsylvania State laws, that if the property was put in the names of the two of them that it would pass to his wife as survivor upon his death and there would be no inheritance tax to be paid?

Mr. Hannum: That isn't the law.

Mr. Gray: I will advise any client that comes to me that that is the law.

By Mr. Gray:

Q. Did you advise Dr. Dorrance that if he took title to the property at Radnor in the name of both himself and his wife as tenants by entireties that in the event of his death there would be no inheritance tax that would have to be paid to the State of Pennsylvania?

A. I did not.

Q. Did you look that up for him?

A. I did not.

Q. Did he discuss it with you?

A. He said that he wanted the title taken in the name of himself and his wife.

Q. Did he tell you the reason?

A. I think not.

Q. You say that you looked up some of the laws of the State of Pennsylvania for him?

A. New Jersey.

Q. I recollect you said that?

A. New Jersey, Mr. Gray.

Q. You said here according to my notes, I recollect your saying that you discussed the law of the State of Pennsylvania and New Jersey and later on that you told him you had investigated the law of the State of Pennsylvania. What was that with reference to?

[fol. 527] A. I don't remember saying that.

Q. Did you look up the law of the State of Pennsylvania as to any piece of this matter for him?

A. No, sir.

Q. You didn't?

A. No, sir. Except I was informed by someone—some of my friends at the bar later as to the right of the wife to take against the will. I also looked up the law of Pennsylvania sometime, I think, later on the question of the right of accumulation. But that was incidental.

Q. Was Dr. Dorrance fearful that his wife in the State of New Jersey might elect to take against his will—was he fearful that she might elect to take against the will and spoil the plan for preserving the Campbell Soup Company?

A. Dr. Dorrance was fearful lest the amount of his taxes plus that possible contingency would make it impossible to keep the Campbell Soup Company intact.

Q. That is if his wife elected to take against his will?

A. Yes.

Q. And you advised him that under the laws of the State of New Jersey the wife couldn't take or could elect to take against the will but that his estate being practically all personal property that it wouldn't make any difference with reference to testamentary disposition?

A. Yes, I did.

Q. Did you also advise him that if his domicile was in the State of Pennsylvania and he left a will which would have to be probated where his domicile was, namely in the State of Pennsylvania, that then under the Pennsylvania [fol. 528] law his wife could elect to take against the will and take such a share of the personal property as she would be entitled to take if he died intestate?

A. That was not the form of my advice.

Q. What did you tell him with reference to the Pennsylvania law?

A. I told him that under the Pennsylvania law the wife could take against the will.

Q. In other words, you didn't enlarge upon it and say what she could take?

A. Yes. I told him she could take one-third of the personal estate.

Q. Isn't that what I said?

A. No, sir, that is not what you said.

Q. Was that before or after his will of May, 1925, was drawn?

A. My impression is that it was prior, just prior to the making of the will of 1928.

Q. In other words, the will of 1925 and the codicil thereto were made long prior to that discussion?

A. Yes.

Q. The will of 1925 had a codicil attached to it as of the date of December 30, 1925, which contained a provision similar in form to the provision contained in his present will with reference to the probate of it in Burlington County, that is true, isn't it?

A. Yes.

Q. You drew that?

A. Yes.

Q. Why—I don't mean why you drew it—you drew it because you were instructed to—but why, after consultation with Dorrance and yourself, was it drawn?

[fol. 529] A. That was after the Radnor property had been occupied by him.

Q. Yes.

A. And people had asked him whether he was now a resident of Pennsylvania and he stated that to me.

Q. You mean he was fearful——

The Court: Wait until he finishes——

A. He stated that to me and he said that he wanted to put something in his will which would ensure the prompt probate of his will in Burlington County.

Q. In other words, he was fearful that his action in occupying the property at Radnor would be considered as adopting Pennsylvania as his domicile?

A. I don't think he was fearful of it. But it had been suggested by his friends out there that he was a resident of Pennsylvania, and he denied it.

Q. In other words, what he was doing—did you advise him that what he was doing was to deny the legal effect of his act, wanted to overcome that legal effect as far as you could, by some declaration of intention?

A. No, sir, I didn't advise him in that form.

The Court: You can't finish with this witness tonight. We will adjourn until tomorrow morning at ten o'clock.

October 21, 1931.

Court convened at ten o'clock.

WILLIAM D. LIPPINCOTT, recalled for further cross-examination.

By Mr. Gray:

Q. How long after your preliminary talks with Mr. Dorrance with respect to the effect of his having purchased the Pennsylvania property upon his citizenship of Pennsyl-

[fol. 530] vania was it that you took up with him the question of the agreement which was ultimately drawn between him and Mrs. Dorrance?

A. That was several months, Mr. Gray.

Q. The agreement is dated, I think, sometime in the following year, isn't it?

A. It is dated early in January, 1926. It was originally drawn for 1925. It was drawn as I recollect at the same time as the codicil of December 30, 1925. It wasn't signed in 1925. So we changed the time from 1925 to 1926.

Q. What was the purpose of the agreement?

A. The purpose of the agreement was exactly as stated in the agreement, Mr. Gray.

Q. Did you advise him that it was unenforceable?

A. I told him that an agreement might be good between himself and Mrs. Dorrance.

Q. Did you advise him that it was unenforceable?

A. I told him, I thought, that the agreement was perfectly good and it was alright to have it made between him and his wife.

Q. Did you advise him that it was unenforceable?

A. I think the question of whether it should be enforced didn't come up at that time. It was made in perfectly good faith between Dr. Dorrance and his wife.

Q. Did you advise him as to any manner in which it could be enforced in the event of his wife not living up to it?

A. That wasn't contemplated in our conversation.

Q. Wasn't the agreement entered into simply for the purpose of creating another evidence of declaration of intention?

[fol. 531] A. It was not. It was made exactly as I stated yesterday.

Q. During the time between 1925 and the time of Dr. Dorrance's death in 1930, did you visit him at Radnor?

A. Yes.

Q. How frequently?

A. To the best of my recollection three or four times.

Q. Of course, I suppose you saw him at your office principally throughout that period of time in connection with these various documents that have been produced?

A. Almost always at his office.

Q. Were those the only places that you saw him?

A. I saw him at Cinnaminson.

Q. How frequently did you see him there?

A. I saw him there quite a number of times.

Q. By engagement that you would make with him?

A. Sometimes.

Q. When was the last time prior to his death that you saw him at Cinnaminson?

A. Either late summer or early fall of 1929, as I recollect.

Q. 1929?

A. That is my personally speaking to him?

Q. Yes.

A. Either late summer or early fall 1929.

Q. A little over a year before his death?

A. Yes.

Q. He met you there alone on that occasion?

A. My recollection is that Peter was there.

Q. His valet?

A. Yes.

[fol. 532] Q. Peter made his home with him over here at Radnor?

A. Yes.

Q. Can you tell me, if you know when your elections were held in 1930 in the State of New Jersey?

A. Primary?

Q. Either that or any election?

A. Primary election was held, as I recollect it—I can verify it by statute, but as I recall it, it was the third Tuesday in June. That is my best recollection.

Q. Was there any other election at all in the spring of 1930?

A. No, sir.

Q. Was there any election prior to November in the fall of 1930?

A. No, sir.

The Court: Was this the primary you mean, that he has spoken of.

Mr. Gray: Primary was in June.

The Court: That is prior to November.

Mr. Gray: I mentioned in the fall, I think I said in the fall, any election in the fall prior to November?

A. Not that I recollect, no, sir.

By Mr. Gray:

Q. In all of these matters in connection with the various documents that were introduced, the wills and other

matters and questions that you have testified as to your personal contact, you were Mr. Dorrance's private counsel, weren't you?

A. Yes.

[fol. 533] Q. And acted for him?

A. Yes.

Mr. Gray: That is all.

Redirect examination.

By Mr. Hannum:

—. I just want to ask you a question or two if I may.

The Court: Go ahead.

By Mr. Hannum:

Q. About these wills—this will of 1928, is that his last will?

A. Yes.

Q. After it was signed by Dr. Dorrance what did he do with it?

A. He gave it to me and told me to take care of it.

Q. How long did you have it?

A. I had it until the following summer, summer of 1929.

Q. And then, what if anything transpired in connection with it?

A. Dr. Dorrance asked me to——

Mr. Gray: I must object to any testimony given with respect to what Dr. Dorrance asked him about this.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

[fol. 534] By Mr. Hannum:

Q. Then what if anything transpired in connection with the will of 1928?

A. In the same summer of 1929, prior to the first of August when I went on my vacation, Dr. Dorrance asked me to bring the will to him and I did so.

Q. Where did you take it?

A. I took it to his office in the Campbell Soup Company building at Second and Market Street, Camden, New Jersey and he and I went over that will together.

Q. Did he make any changes in it?

A. No, sir, he didn't.

Q. And then after he went over it, what did he do with it?

A. He gave it back to me and told me to take care of it.

Q. Did he say anything else?

A. At that time, as he did at the time that he originally gave the will to me immediately after its execution, he told me that he wanted me to remember that if anything happened to him he wanted that will admitted to probate in New Jersey and he wanted me to see that was done.

Q. And after he gave you the will on this last time, how long was it in your possession?

A. It was in my possession until a few days after Dr. Dorrance's death.

Q. And then what did you do with it?

A. I took it to Mt. Holly personally and delivered it to the surrogate of Burlington County at Mt. Holly, New Jersey.

Q. Is there a law in New Jersey relative to the assessment and payment of a poll tax?

[fol. 535] There is.

Q. I show you a book, what is that book?

A. That is, that book is the pamphlet laws of the State of New Jersey for the year 1918.

Q. Is there a reference in that book to a poll tax law?

A. There is a reference in that book to an Act for the assessment and collection of taxes.

Q. Is the Act in that book?

A. Yes.

Q. What is the Act?

A. The Act?

Q. What is the date and what year, what year and what date?

A. The Act is Chapter 236 of the laws of 1918 of the State of New Jersey, approved March 4, 1918, to take effect on October 1, 1918, according to its terms.

Q. What page is in the pamphlet laws of 1918?

A. Page 847 of the pamphlet laws of 1918.

Mr. Hannum: I offer the pamphlet laws of the State of New Jersey for the year 1918 in evidence, particularly with reference to the Poll Tax Act which appears in said pamphlet laws on page 847 thereof.

Mr. Gray: I have no objection except that I would like to ask the Judge one question:

Q. Are these laws still in effect in the State of New Jersey and never been repealed?

A. Yes.

Mr. Gray: No objection.

The Court: No objection; it is received.

By Mr. Hannum:

[fol. 536] Q. I show you exhibits V, W, Y, Z, Z-1, Z-2, Z-3, and ask you what they are and what reference they have to this particular act?

Mr. Gray: That is objected to. On the face they purport to be poll tax receipts and this is not the proper witness to prove they are poll tax receipts by.

The Court: You want them to call somebody who issued the receipts.

Mr. Gray: Somebody that knows properly and legally what they are.

The Court: I suppose that is true. I won't receive them. But will let them prove them another time.

By Mr. Hannum:

Q. I show you Exhibit "A-1"; what is that?

A. That is a deed from—made by Joseph L. Thomas, trustee, and Catherine H. P. Williams to John T. Dorrance dated November 20, 1909, covering a tract of land containing 76.62 acres of land, more or less situate in the Township of Cinnaminson, County of Burlington and State of New Jersey.

The Court: Let me see that.

By Mr. Hannum:

Q. I show you Exhibit "A-2"; what is that?

A. That is a deed made by John T. Dorrance and Ethel M. Dorrance his wife to Joseph Campbell Company, a corporation created by and existing under and by virtue of the State of New Jersey, dated December 29, 1909, covering a tract of land in the Township of Cinnaminson in the County [fol. 537] of Burlington, State of New Jersey, containing 76.62 acres more or less.

Q. Now is the property in A-1 and A-2 identical?

A. The property is identical.

Q. Do you know of your own knowledge whether Pomona farms at which Dr. Dorrance lived in New Jersey is a part of the curtilage of that property?

Mr. Gray: I object to that. I will not object if Mr. Hannum will put his question as to whether he knows what property that is.

By the Court: Do you know what property it is.

A. Yes.

The Court: Then he can tell what property it is. I have no objection to that.

The Court: Now ask your question.

A. The property included in these two pieces consists of the property known as Pomona farms, Dr. Dorrance's home at Cinnaminson, Cinnaminson Township, and farm No. one of the Campbell Soup Company as at present constituted.

Mr. Hannum: I desire to offer these two exhibits in evidence.

Mr. Gray: May I inquire for what purpose?

Mr. Hannum: For the purpose of showing the ownership and residence of Dr. Dorrance primarily and eventually the Campbell Soup Company, and then Dr. Dorrance and his residence.

Mr. Gray: I object. Not because of any technical question that I am raising in the manner of proof, I will waive [fol. 538] that. But on the ground that they do not prove either the purpose for which they are offered, nor do they prove anything that is relevant or material to this case. I direct your Honor's attention to the fact that this is a purchase of a piece of property in 1909, in November, and the holding of it for a period of a little over a month, a month and nine days to be exact, and the conveyance of that same piece of property then to the Campbell Soup Company one month and nine days later, and back in 1909, twenty-one years before his death. I can't see that it has any relevancy to this case.

The Court: Unless it proves his residence at that time, and then somebody will have to prove a change, when he changed his residence.

Mr. Gray: If your Honor please, it doesn't prove his residence at that time. There is testimony that he lived at Pomona Farms until 1925 in a tract of ground covering seven acres. But this is taking title to a piece of property and passing it to the Campbell Soup Company twenty-two years before his death.

The Court: This would probably be evidence of his residence in Camden County.

Mr. Hannum: As you will recall, there was evidence here from Dr. George Dorrance, I think, that he had—that he selected this particular place for his home and residence in about 1910 or 1911 somewhere.

Mr. Gray: For a month and nine days.

The Court: It doesn't make any difference how long, if it is only for a minute, if he intended to make it his residence.

[fol. 539] Mr. Hannum: And that he had selected and bought this property.

The Court: I think he did testify to that.

Mr. Gray: That is something that happened some twenty-two years ago. I have stated my objection. Your Honor overrules it.

The Court: I over-rule your objection and give you an exception. It is some slight evidence. It is not quantitative but it is some evidence.

(Bill sealed for the Commonwealth.)

Recross-examination.

By Mr. Gray:

Q. Did you have anything to do with this transaction that is represented by these two deeds?

A. Mr. Gray, there is every indication that the first deed was drawn by me or by my directions. The second deed was drawn by me or by my direction and I took the acknowledgment to it.

Q. By the first, you mean the deed by which Mr. Dorrance took title to this particular property; by the second you mean the deed by which he conveyed that title to the Campbell Soup Company?

A. Yes.

Q. And that property is the property which the Campbell Soup Company used for the purpose of raising vegetables?

A. That property in part is the property which the Campbell Soup Company used for raising vegetables and in part the property which Dr. Dorrance maintained as his home up to the time of his death.

[fol. 540] Q. In other words, it contains on that piece of land, the house, a picture of which you have seen?

A. I haven't seen it.

Q. The picture of which has been here exhibited, the property is owned and has been owned by the Campbell Soup Company continuously since 1909?

A. By Joseph Campbell Company and its successor.

Q. And this Campbell Soup Company is the successor?

A. Yes.

Q. I show you picture which is marked exhibit 1 and repeat my question to you—that the property is the property on a certain piece of ground of which there exists this house that I have shown you a photograph of?

A. Yes.

Q. Now, to come back to the other end. The other matter about which Mr. Hannum has examined you. You said in the latter part of 1928, if I recall the date correctly Mr. Dorrance spoke to you about his desire to have his will probated in Burlington County?

A. No, sir.

Q. Am I wrong as to the date. If I am wrong as to the date, correct me. Am I wrong as to the date?

A. The latter part of 1925.

Q. If you testified that that conversation was in the latter part of 1928 before, then that is an error. It is 1925, is it?

A. It depends which conversation you are referring to. If you are referring to the conversation as to which I was examined just a few minutes ago by Mr. Hannum——

Q. I am referring to that?

[fol. 541] A. There were two conversations.

Q. I am referring to that, last talk about that, when was that?

A. First conversation?

Q. When was the one—I am asking you about the conversation about which you were examined in redirect examination a few minutes ago, when was that?

A. That was in the summer of 1929, prior to August 1st.

Q. I had understood it was 1928.

Q. That answers my question.

A. There were two.

Q. In the latter part of 1925 you drew a codicil to his will?

A. Yes.

Q. And in that codicil it was provided that his will should be probated in Burlington County?

A. It was.

Q. And in 1928—if I am wrong correct me as to the dates. I am not bothering referring to my memorandum, you drew another will for him?

A. Yes.

Q. And in that will it was provided that his will be probated in Burlington County, that is right?

A. Yes.

Q. And in either one or both of these documents, that is either the will of 1925 and the codicil thereto, or the will of 1928 or both, it was provided that you should be retained to act as counsel?

A. As proctor for the estate.

Q. As proctor for the estate. And naturally, therefore, both of these wills and the codicils you were very familiar with them?

A. Yes.

[fol. 542] Q. And they contained the express instruction, that is correct, to probate in Burlington County?

A. The codicil.

Q. The codicil of December, 1925, and the will of 1928?

A. Yes.

Q. But notwithstanding all those expressed instructions Dr. Dorrance again in the summer of 1929 told you that he wanted you to be careful, in effect, to see that these instructions were carried out. Is that correct? Did he tell you that?

A. That was not his statement.

Q. What was his statement?

A. That he wanted me to see to it that the will was probated.

Q. Did he use the word "see to it"?

A. Yes.

Mr. Gray: That is all.

By Mr. Hannum:

Q. You started to speak about the conversation in 1925 and were interrupted by Mr. Gray, what was that conversation?

A. That conversation that I had in my mind was the conversation of 1929 when Doctor Dorrance and I went over his last will, when he handed it to me.

Q. What did he say?

Mr. Gray: He testified to that on both direct and redirect examination.

The Court: We have had that a half dozen times. I don't see any reason why it should be repeated.

[fols. 543–545] By Mr. Hannum:

Q. I understood you to say there was some conversation in 1925?

A. It was practically the same conversation.

Mr. Hannum: The same conversation?

The Court: He said that.

Mr. Hannum: I desire to recall Judge Lippincott later concerning some other matter.

The Court: You may recall him at any time.

[fol. 546[TESTIMONY OF WILLIAM D. LIPPINCOTT—Pages 408-a to 417-a, inc.

WM. D. LIPPINCOTT, recalled.

By Mr. Hannum:

Q. I show you exhibits, executors' Exhibit A-15, and ask you whether you know the signature that appears there as President?

A. Yes.

Q. Whose is it?

A. Signature of John T. Dorrance.

The Court: Show him all the papers and ask him the same thing on all of them.

By Mr. Hannum:

Q. I show you Exhibits A-14, A-17, A-18, A-19, A-21, and ask you whose signature appears on there as President?

A. The signature of John T. Dorrance on all of them.

By Mr. Gray:

Q. The signature, the other signature appearing upon these various exhibits that have just been shown to you, when the question was put to you, is your signature?

A. Yes.

[fol. 547] Q. You were Secretary of the company during all this period of time when these reports were filed?

A. Yes.

Q. And then in another exhibit here, that has been offered in evidence and accepted over my objection, there is on Exhibit 20, that is your signature as Secretary, that is true?

A. Yes.

Q. And on Exhibit No. 16, your signature appears alone, does it not?

A. Yes.

Mr. Gray: That is all.

Mr. Hannum: That is all.

The Court: Are you going to offer these papers in evidence?

Mr. Hannum: I did offer them.

The Court: But you opened the question again, because the signature was not admitted. Now it is proven. Offer them again if you wish to.

Mr. Hannum: I desire to offer in evidence Exhibits A-16, A-20, A-15, A-21, A-19, A-18, A-17 and A-14.

Mr. Gray: I object to them.

The Court: Objection overruled. They are admitted for the purpose of showing his residence, as evidence of his residence.

(Bill sealed for the Commonwealth.)

Mr. Hannum: I understand it is agreed on the record between Mr. Gray and me that photostatic copies of these may be put in the record.

[fol. 548] The Court: It doesn't make any difference whether you agree or not, I will let you do it.

By Mr. von Moschzisker:

Q. Judge, Mr. Gray asked you the other day when you were on the stand in his cross-examination whether all the wills of Dr. Dorrance which you identified then were not dated subsequently to 1925, and you answered, yes, that they were. I hand you these documents and ask you what they are?

A. They are wills and codicils signed by Dr. Dorrance.

Q. At what dates?

A. Between the second day of March, 1912, and the 19th day of May, 1924.

Q. In other words, they are all wills prior to the will of 1925?

A. They are wills and codicils.

Q. Wills and codicils?

A. Signed by Dr. Dorrance.

Q. Now, there is one purpose I have here, will you just read the introductory words——

Mr. Gray: I object to that. Either they are admissible or they are not. He can offer them for a limited purpose if he wants to.

Mr. von Moschzisker: The reason I put it that way is this; I don't see any occasion for encumbering the record by copying these several wills. We just want the words in the beginning of each one.

The Court: Limit them as you want, in the evidence.

[fol. 549] Mr. von Moschzisker:

Q. Read the introductory words in the first will where he describes his residence.

Mr. Gray: I object to that upon the ground that if any part of this paper is evidence the entire paper has to go in evidence. Although my friend may limit the purpose for which he offers it, still he may not have the contents read of a part of a paper.

The Court: That may be true. If you want to encumber the record, we will let it all go in. If it is to show residence if it is stated in there where his residence is. I don't know what is in the paper.

Mr. von Moschzisker: I pass the paper up to your Honor. My notion of it is simply to show the admission or declaration.

Mr. Gray: By an opposing party.

Mr. von Moschzisker: Not necessarily an opposing party.

The Court: I will permit you. Overrule the objection and give you an exception.

(Bill sealed for the Commonwealth.)

By Mr. von Moschzisker:

Q. Now, what are the introductory words as to residence of the testator, just the introductory words as to his residence.

A. "I, John T. Dorrance, of the Township of Cinnaminson in the County of Burlington and State of New Jersey, being of sound and disposing mind, memory and understanding——". That was the beginning of his will [fol. 550] dated March 2, 1912. Signed by Dr. Dorrance.

Q. Now, read the others.

A. "I, John T. Dorrance, of Township of Cinnaminson, in the County of Burlington, State of New Jersey, being of sound mind, memory and understanding" was the beginning of a codicil signed by Dr. Dorrance dated September 26, 1913. That is the codicil to the will which I have just mentioned.

"I, John T. Dorrance, of the Township of Cinnaminson, in the County of Burlington, and State of New Jersey" was the beginning of a further codicil to the will of 1912, dated April 26, 1915. Signed by Dr. Dorrance.

Mr. Gray: My objection covers all these.

The Court: Yes. Objection overruled.

(Bill sealed for the Commonwealth.)

A. "I, John T. Dorrance, of the Township of Cinnaminson, in the County of Burlington, State of New Jersey" was the beginning of a will signed by Dr. Dorrance dated June 26, 1918.

"I, John T. Dorrance, of the Township of Cinnaminson, in the County of Burlington, and State of New Jersey," was the beginning of a will signed by Dr. Dorrance dated January 17, 1919.

"I, John T. Dorrance, of the Township of Cinnaminson, County of Burlington, and State of New Jersey," was the beginning of a codicil to the will of 1919, which codicil was dated October 28, 1919 and signed by John T. Dorrance.

[fol. 551] "I, John T. Dorrance, of the Township of Cinnaminson, County of Burlington, and State of New Jersey," was the beginning of a codicil to the last mentioned will and dated May 13, 1924. Signed by Dr. Dorrance.

By Mr. Gray:

Q. When did all these wills come into your possession?
A. At the time they were executed.
Q. In other words, they were all drawn in your office?
A. They were drawn by me under my direction or supervision in my office.
Q. I suppose the mechanical work of the drafting of the wills was done by somebody else than yourself?
A. In some of them, yes.
Q. In other words, the provisions with the beginning and the ending of the wills are usual and customary in the State of New Jersey as they are in other states, and any one in your office knew them as well as you did?
A. Mr. Gray, I dictated every word of all of these wills and codicils.
Q. When you did it in each case you had the previous will before you because each one exhibits a change in some provisions in the previous will?
A. Except the first one.
Q. And then coming on down the wills follow the same general form?
A. Yes.

By Mr. von Moschzisker:

Q. You have already told us your qualifications as a [fol. 552] lawyer, and an Ex-Judge of the State, I hand you a volume marked "Laws of New Jersey, 1918," opened at page 848, what is that a law with reference to.

Mr. Gray: Objected to. It may make it a criminal offense to kill a dog. Let me see it. Go ahead.

By Mr. von Moschzisker:

Q. What does that law have reference to?
A. It has reference to the taxation of property within the State of New Jersey and also with reference to the poll tax payable under the laws of the State of New Jersey.

Mr. von Moschzisker: I think it is proper I should state my purpose on what I am about to do. When these tax returns were offered they showed a very small sum returned for personal tax assessment, a few thousand dollars. I want to show by Judge Lippincott what personal property is exempt in New Jersey from taxation. So there will be no false conclusion drawn from these returns.

Mr. Gray: I object to it, because I don't think that is the proper way to go about it. I think what they will have to do is not to show what the law is but what property is exempt. But they will have to show first what property Dr. Dorrance had and then show under the law that property was exempt. We are not concerned with anything else. Whether that property during those various years was exempt or not, we are not concerned with the question of what property is exempt. We are concerned with whether that particular property was exempt on the theory of Judge von Moschzisker.

[fol. 553] The Court: The bills assess the tax on the personal property.

Mr. Gray: Yes. They will have to show first of all what personal property he had during those years.

The Court: Not necessarily.

Mr. von Moschzisker: You have the appraisement here.

Mr. Gray: The appraisement doesn't show it. Let me state my objection in this way: I object to the witness stating or testifying as to what the laws are with respect to the property that is or is not exempt from taxation in the State of New Jersey, until and unless my friend on the other side shows what property John T. Dorrance—personal property—was possessed of during that period of time that these tax bills cover, or unless they include as part of their offer the intention to establish that immediately hereafter.

Mr. von Moschzisker: It is not necessary for the Judge to read from the book at all. I will simply offer the book.

The Court: Objection overruled. Give you an exception.

(Bill sealed for the Commonwealth.)

By Mr. von Moschzisker:

Q. Go ahead and tell us what character of property and read to us parts exempting property from taxation.

A. Under Section 202 of the Act, which is Chapter 236 of the Laws of 1919, it is provided that all property real [fol. 554] and personal within the jurisdiction of this state not expressly exempt by this Act, or excluded from its provisions, shall be subject to tax annually under this Act at its true value and shall be valued by the assessors of the respective taxing districts. Then there are other provisions.

Q. All I asked you to read were the exemptions.

A. The exemptions are contained under section 203 of Chapter 236, and cover two pages and a half.

Q. You needn't read all those.

Mr. Gray: If you want to read it——

By Mr. von Moschzisker:

Q. Go ahead and read them.

A. Section 203 of that Act, on page 848 of the Pamphlet Laws of 1918, provides: The following property shall be exempt from taxation under this Act, namely—1: (a)—I might say there have been subsequent amendments of this section 203.

Q. Just go ahead.

A. That is not the last Act for exemption, showing the exemptions under the law.

Q. Did they make additional exemptions, or did they take away some exemptions?

A. They do both.

Q. Have you the subsequent ones with you?

A. No, sir.

By Mr. Hannum: Will you get them.

A. I can produce them.

Mr. von Moschzisker: You can produce them. I will [fols. 555-558] withdraw you temporarily. The witness is withdrawn temporarily.

I want to offer a couple letters here in evidence, marked Executors' Exhibits A-22 and A-23. I now offer executors' exhibit A-22 and A-23 being letters: one dated—A-23 being dated April 27, 1925 and A-22 being dated May 26, 1925. The first is a letter from the Continental Storage and Warehouse Company to John T. Dorrance and the second is a letter from John T. Dorrance to the Continental Stor-

age and Warehouse. Now, the only thing I need to read to you is the letter from Dr. Dorrance. Will you have them both?

Mr. Gray: I desire, if the Court please, to interpose an objection to the relevancy and materiality and admissibility of these letters, not on the technical ground that the letters have not been proven, because I agreed with Counsel on the other side that they need not actually prove the writing and mailing or receipt of the letters. But assuming that proof has been offered with regard to these letters, and others, which I am also making the same admission with regard to—I do object to them because of their not being admissible in evidence.

The Court: I will admit them and give you an exception.

(Bill sealed for the Commonwealth.)

Mr. von Moschzisker: The purpose of the offer is to show declarations as to residence at Cinnaminson.

[fol. 559] TESTIMONY OF ETHEL M. DORRANCE—Pages 250-a to 358-a

ETHEL M. DORRANCE, sworn.

By Mr. Hannum:

Q. Mrs. Dorrance, what is your full name?
A. Ethel Mallin Ckrodt Dorrance.
Q. Who was your husband?
A. John Thompson Dorrance.
Q. When were you married?
A. 18th of August, 1906.
Q. Where were you married?
A. Baltimore, Maryland.
Q. Maryland was then your home?
A. I was born and raised in Baltimore, Maryland.
Q. Were there children by the marriage?
A. Five children.
Q. And the oldest, and then the next, their names?
A. Do you wish me to say where they were born?
Q. I want you to give us their names?

A. Eleanor Dorrance; Ethel Mallin Ckrodt Dorrance, 2nd; Charlotte Kelsey Dorrance; Margaret Winifred Dorrance and John Thompson Dorrance, Jr.

Q. What was the name of the first?

A. Eleanor.

Q. Where was she born?

[fol. 560] A. At the Presbyterian Hospital, in Philadelphia.

Q. And the next?

A. At the Presbyterian Hospital, Philadelphia.

Q. And the third?

A. At the Presbyterian Hospital, Philadelphia.

Q. And the fourth?

A. Cinnaminson, Pomona Farms, Cinnaminson, New Jersey, at my residence.

Q. And the fifth?

A. At Pomona farms, Cinnaminson, New Jersey.

Q. How long prior to your marriage had you known Dr. Dorrance?

A. Two years and four months.

Q. At the time of your first acquaintance with Dr. Dorrance, are you able to say where he was employed?

A. He was employed by the Joseph Campbell Preserving Company which is now the Campbell Soup Company.

Q. Where was he living at that time?

A. At 522 Linden Street, Camden, New Jersey.

Q. With whom, if you know?

A. He was living with Miss Mary Bergen.

Q. And boarding there?

A. And boarding there.

Q. Who was Miss Mary Bergen as to any one whom we know on this date?

A. She was an aunt of a friend of his, Martin Bories Bergen, and the two Bergen boys and several other young men worked in different shipyards and lived there, friends of Mr. Bergen.

Q. How long did Dr. Dorrance live there?

A. He lived there from the time of his entrance into the Campbell Preserving Company until Miss Mary Bergen's death, which was in November, 1905.

[fol. 561] A. And after her death and the close of her house, of that house, where did he then go?

A. He took apartments at the Robeson Apartment House, Camden, New Jersey.

Q. And is or is not that the place at which he was living when you and the doctor were married?

A. That is where he was living and where I went to live.

Q. After your marriage?

A. After we were married.

Q. May I ask, how long did you live there?

A. We lived there until the fall of 1909.

Q. I neglected to ask you—won't you tell me when you went there to live?

A. I went there to live in—right after I was married, in 1906.

Q. You lived there substantially three years?

A. All the time except when we were at Atlantic City, or unless we took little trips.

Q. And then when you left the Robeson Apartments in 1909, where did you go to live?

A. At the residence of my brother-in-law, George Morris Dorrance, 1716 Locust Street.

Q. Was that residence there temporary or permanent, in character?

Mr. Gray: That is objected to. Neither counsel or witness may characterize the residence. The witness may describe it and what was done there; how they lived there. But the matter of determining whether that residence was temporary or permanent is for your Honor to draw the conclusion from the testimony.

The Court: If the testimony is that it was temporary I draw the conclusion that it was temporary; if the testimony [fol. 562] is that it was permanent I draw the conclusion that it was permanent. Therefore, I admit the question.

Mr. Gray: Will your Honor hear me further before ruling?

The Court: No, I have heard you. I will overrule the objection and give you an exception.

(Bill sealed for the Commonwealth.)

Mr. Hannum:

Q. (Question read.)

A. It was a temporary residence.

Q. Why did you go there?

Mr. Gray: That is objected to as immaterial and irrelevant.

The Court: Yes. I sustain that objection. She says it was temporary. Exception.

(Bill sealed for the Executors.)

By Mr. Hannum:

Q. How long were you there?

A. We went there the first part of November, 1909, and went to the Brighton Hotel at Atlantic City for the Easter vacation, where we stayed a month and then returned for a few weeks—went back there the last part of June where we stayed until the first of October. And then in the meantime Dr. Dorrance and I had been looking for a residence. And we went back to Dr. Dorrance's and stayed from the first of October until March when we again went to Atlantic [fol. 563] City; and from there we moved to Pomona Farms the 7th of May, 1911.

Q. You say that you and Dr. Dorrance had been looking for a residence?

A. Yes, we had.

Q. Did you after that search make any selection?

A. Well, we chose what we——

Q. Answer yes or no?

A. Yes.

Q. What selection did you and Dr. Dorrance make?

A. Well, we chose a place that was then called Pomona by the Parry family that was afterwards purchased by my husband and when we took the place to live there I added "farms", because there were several Pomona or Povonas and so many things around the country that got people confused, so as it was a farm, I added "farms" to it.

Q. And this is Pomona Farms in Cinnaminson Township?

A. Yes, it is.

Q. Which has been spoken of so frequently in this case?

A. Yes.

Q. When did you go there to live at Pomona Farms, Cinnaminson Township, Burlington County, New Jersey?

A. The 7th of May, 1911.

Q. How long did Dr. Dorrance live there?

A. Until his death.

Q. Had you had any other intended establishment or home of your own up until that time?

Mr. Gray: Up until the time of Dr. Dorrance's death? Up until what time?

[fol. 564] By Mr. Hannum:

Q. Up until you went to live at Cinnaminson?
A. No, sir, we had not.
Q. Did you look at others?

Mr. Gray: That is objected to as immaterial and irrelevant.

The Court: That objection is sustained. Exception.

(Bill sealed for the Executors.)

By Mr. Hannum:

Q. Will you describe Cinnaminson for us, the house, and the grounds?

A. Well, it was an ordinary red brick mansard roof house of the time that it was built; very ugly. We were undecided whether to tear it down or to build. But they had beautiful trees around and so we decided to keep the house where it was and add to it and have the trees. As I say it is very ugly but very comfortable inside. It is nicer inside than it is out.

Q. Will you describe the interior, please?

A. Well, we have a very large glass inclosed porch in front that we always use as a living room. And then inside there is a regular room; one on one side and one on the other, which we never use unless it was too cold to sit outside. And then back of that is a very large dining room, I suppose, it is about sixty-five feet long with a big fire place in the middle and a breakfast room at the end; and back of that is the pantry and kitchen, and laundry [fol. 565] and servants dining room. And upstairs were eight bed rooms and three baths; with a big enclosed porch at the back.

Q. That is upstairs?

A. Yes, second floor. Third floor: four bed rooms and two baths.

Q. And the grounds, their extent and character?

A. I have no idea of the acreage, but we had lawn all around us and a tennis court, and our vegetable gardens and orchard. Then back of that was the experimental farm.

Q. Can you give us the approximate outside dimension of the house, Mrs. Dorrance?

A. I am awful sorry, I don't think I could.

Q. Can you characterize it in any way as to size?

Mr. Gray: That is objected to. That won't help us at all.

The Court: She lived in the house; she can describe it. Show her that photograph; ask her if that is the photograph of it.

Mr. Hannum: That photograph too was taken with the camera in the back door.

Mr. Gray: I ask that that remark be stricken from the record.

By Mr. Hannum:

Q. How old were the oldest children in 1925, Mrs. Dorrance?

A. My oldest child in 1925—my oldest would be eighteen on the 12th of November, 1925—no, 1926—wait a minute.

The Court: Why don't you have Mrs. Dorrance give the birthday of all the children.

[fol. 566] A. She would be 18 on the 12th of November, 1925.

Q. And the next child, how old was she?

A. She was sixteen on the 17th of July, 1925.

Q. And the next?

A. The next would be—she would be fourteen the 10th of November, 1925.

Q. And the other two were—what was the next?

A. The next would be ten on the 18th of October, 1925.

Q. And then the boy.

A. The boy would be—he was six years old in 1925.

Q. Now, in 1925, did Dr. Dorrance purchase any other property?

A. He purchased a property at Radnor, called Woodcrest.

Q. And why was that purchased?

Mr. Gray: That is objected to.

The Court: If she knows.

Mr. Gray: If your Honor will hear me on that——

The Court: I will hear you.

Mr. Gray: I want to know whether he is asking the reason that emanated from Mrs. Dorrance's mind or the reason that emanated from Dr. Dorrance's mind. His question is not clear to me.

The Court; She didn't purchase it.

Mr. Gray: Yes, she did. She and Dr. Dorrance?

The Court: He purchased it and put the title in her name.

Mr. Gray: I haven't heard that evidence yet.

The Court: That is what Judge Lippincott said.

[fol. 567] Mr. Hannum: Yes.

Mr. Gray: Let us assume that for the sake of argument: then she is being asked the reason why Dr. Dorrance purchased it; she is asked to give the reason of a mind outside her own.

The Court: She can testify to it. Overrule the objection. Exception.

(Bill sealed for the Commonwealth.)

A. I wanted my husband to buy.

Mr. Gray: Pardon me: now she, in answer to the question, says, she knew what she wanted. Your Honor has ruled that she may tell why Dr. Dorrance purchased it.

The Court: She has the right, of course; it is evidence to show that she induced him to purchase it; and why he did it. Isn't it?

Mr. Gray: I don't think it is evidence.

The Court: I do, in this kind of a case. It is on the question of domicile, as I understand.

Mr. Gray: Yes.

The Court: I think anything that can be shown that Dr. Dorrance did as affecting his domicile, whether it was in New Jersey or Pennsylvania or any other place that he had any, is proper evidence.

Mr. Gray: Anything that he did——

The Court: Or any conversation that he had is evidence.

Mr. Gray: I don't think so.

[fol. 568] The Court: I do. We disagree as to that. Just at present, I have the deciding of it.

Mr. Gray: Yes.

The Court: I will overrule your objction and give you an exception.

(Bill sealed for the Commonwealth.)

The Witness: May I have the question again?
Q. (Question read: Why was that purchased?)

By Mr. Hannum:

Q. I am speaking of Radnor?

The Court: If you know, of course.

A. It was purchased so that our children would be more in contact with children and where they could go to school more easily with children with their prospects in life, and where we could do some entertaining for my oldest daughter who was then coming of age and who mingled with the world; and where I—may I—

The Court: Certainly, go ahead.

A. And where I would be nearer my associates.

By Mr. Hannum:

Q. Was that discussed by you with Dr. Dorrance?
A. Very often.
Q. What did he say about the purchase of it?

Mr. Gray: I interpose an objection.
The Court: Objection is overruled. Exception.

[fol. 569] (Bill sealed for the Commonwealth.)

The Court: I will let your objection cover it all.
Mr. Gray: I will interpose an objection when I think it is needed.

A. He said for years he would never go to Philadelphia or Pennsylvania to the country because it was too far from his business and I prevailed upon him to do it and it was with the stipulation that we spend so much of my time every week at Pomona farms and so much of my time in the summer there, because he thought when we did decide on Radnor as a residence that it would be too tiresome for him to motor backwards and forwards.

Q. When the property at Woodcrest was purchased at Radnor, were or were not any of the furnishings taken from Cinnaminson to that property, household furnishings?

A. None of the furniture was taken there except, I think,

a chair and bed for my mother who lived with me at that time and a few little things of hers.

Q. When Woodcrest, or the Radnor property, was purchased, when you stayed at Radnor was the Cinnaminson house open or closed?

A. It was never closed.

Q. Has or has it not ever been closed since you and Dr. Dorrance first went there to live up until the time of his death, and after, to the present day?

A. It has never been closed to my knowledge.

Q. Are there servants at Cinnaminson?

Mr. Gray: That is objected to.

A. Yes.

[fol. 570] Mr. Gray: That is objected to, until it is shown that this lady has some knowledge whether there are servants at Cinnaminson.

The Court: Well, he can ask if she has any knowledge of it.

A. Do you mean at the present time?

The Court: Up to the time of your husband's death.

By Mr. Hannum:

Q. Who has managed and supervised the maintenance and conduct of the home at Cinnaminson since it was opened in 1911 and you went there to live up to and including the present time?

Mr. Gray: That is objected to. I wouldn't object to the question if it was limited to a time in 1925 when this lady moved to Woodcrest, Radnor. Inasmuch as the question includes down to the present date, I must object.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

Q. (Question read.)

A. I have.

By Mr. Hannum:

Q. Now, will you tell us about what servants you have had there during that period?

Mr. Gray: I object to that notwithstanding the witness answered that she has managed during that period of time. I have no objection to the witness testifying as to the serv-
[fol. 571] ants that were out there in 1925.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. Well, I don't think I can possibly enumerate all of them from 1911.

Mr. Hannum:

Q. You don't remember.

A. I couldn't enumerate them from 1911.

Q. I don't mean their names?

A. How many I had—how many servants I kept?

Q. Yes. How many have been kept there?

A. When I left to go to Radnor the winter of 1925 I left four servants in the house; a house man who took care of the porches and the furnace and did the windows. And then one waitress who was quite young left in a few weeks because she said it was very quiet, not having the family there constantly; and then I had three with the house man. And then I had them until, I think in 1928, this girl who had lived with me always—I think it was first place she had in this country—got married and went back to Ireland. And then I had two with the houseman. And then when I went over, backwards and forwards, I would always take people with me.

Q. That is by people, you mean servants?

A. Servants from Woodcrest would go with me and my children's nurse.

Q. Now, Mrs. Dorrance, did you have a cottage at Bar Harbor?

Mr. Gray: I object to that as totally immaterial and irrelevant.

[fol. 572] The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. I did.

By Mr. Hannum:

Q. For what years?

A. I had them for four years—1931, 1930, 1929 and 1928.

Q. When you left Radnor to go to Bar Harbor would you take the servants from Radnor to Bar Harbor as you did when you left Radnor to go to Cinnaminson, some of them?

A. I only took the servants from Woodcrest because Woodcrest——

Q. I am asking you whether you took them, not why you took them?

A. Ask me the question again.

Q. When you left Radnor to go to Bar Harbor would you take servants from Radnor to Bar Harbor?

A. All, excepting in the year 1926 when the house was kept open so that the servants stayed there that summer because we went to a hotel to live.

Q. Now, as I understand, when you left Radnor to go to Cinnaminson you took some of the servants to Cinnaminson from Radnor?

A. Yes.

Q. And when you left Cinnaminson in 1925 to go over and stay at Radnor you took some of the servants from Cinnaminson to Radnor?

A. I did.

Q. You have said that you supervised and managed Cinnaminson, and that servants were there. What about pro-
[fol. 573] viding food and so on for Cinnaminson?

Mr. Gray: What about it? I object to that. I would like him to put a question. I don't understand this "What about."

By Mr. Hannum:

Q. What were the natures of the food and things supplied for Cinnaminson?

Mr. Gray: That is objected to. May I have the question preceding that one read. Unfortunately, I don't understand it. If it is my dumbness I would like to acknowledge it.

(Question read.)

Mr. Gray: I object to that.

The Court: Objection overruled. I don't think it amounts to much. Exception.

(Bill sealed for the Commonwealth.)

A. I always had groceries and canned goods there and the preserving was done from the fruit trees every fall and during the summer just as formerly.

By Mr. Hannum:

Q. In the winter time was the house heated—was the house heated?

A. Yes.

Q. When did you first go to the Radnor property and open it for habitation?

A. We slept there the first night the 14th of November, 1925.

[fol. 574] Q. From 1925 until 1930, how much of Dr. Dorrance's time was spent at the Radnor house. In other words, how did it run along; when did you go there and how long did you stay?

A. Well, we went there and it was our intention to go over and get——

Q. I am talking now about Radnor.

A. We spent a great deal of time there except when we were in New York or when we were in Florida where we went every winter, or when we went abroad, or when we were at Cinnaminson.

Q. When would you go to the Radnor home or house?

A. Usually at the week ends when the children weren't at school.

Q. I am talking about Radnor?

A. When would we go there?

Q. Yes, what time of year?

A. After the children's school commenced and when the parties started.

Q. Social activities began?

A. Yes.

Q. When would that be?

A. The first—about the first part of October—around the first part of October.

Q. And you stayed there, as I understand it, intermittently while they continued?

Mr. Gray: She hasn't said anything of the kind. My friend's understanding is totally immaterial.

The Court: Take out the "understanding." Now ask her.

Mr. Gray: I want more than "understanding" out of it.

[fol. 575] The Court: Objection sustained.

Mr. Gray: He suggested that he understood it was intermittently.

The Court: I have sustained your objection.

(Bill sealed for the Executors.)

By Mr. Hannum:

Q. I understood you to say that you went there each year after you purchased the Radnor place?

A. Yes.

Q. About October?

A. Yes.

Q. I likewise understood your testimony to be that that was when the children's school opened and when the social activities began?

A. Yes, it was.

Q. How long would you stay at Cinnaminson?

Mr. Gray: Wait a minute.

By Mr. Hannum:

Q. I mean at Radnor?

Mr. Gray: That is objected to. I haven't the slightest objection to his asking this lady from time to time, that is from November 14, 1925, when they first occupied the place, where she was and how long she stayed there and where she went and then so on. But just the general "How long would you stay there——"

The Court: How long did you stay there?

By Mr. Hannum:

Q. How long did you stay there?

[fol. 576] Mr. Gray: After you went there in November, 1925.

By Mr. Hannum:

Q. How long did you stay there. I understood it was your practice to go there in October?

A. Yes.

Mr. Gray: That is objected to unless he indicates what particular year he is talking about.

Mr. Hannum: Let her take it along chronologically, if you desire it.

Mr. Gray: I don't desire. Your Honor overrules my objection.

The Court: Yes, objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. Dr. Dorrance and I stayed during the week most all winter until the latter part of March or first part of April when we went abroad every year. Unless—we fished every year in Florida, and then we would take short trips or go to Cinnaminson.

Q. Now beginning, if we might, with the year 1925, you have said or testified that you went there in November?

A. The 14th.

Q. I assume that you went abroad—or did you go abroad in the winter of 1925, January or February of 1926.

A. We went, I think, in April of that year.

Q. You went in April?

A. Of 1926. We went every year from 1922, sometimes twice. 1928 and 1929 we went abroad twice.

[fol. 577] Q. Did you during the time from November, 1925, until April, 1926, go to Cinnaminson?

A. Why, yes.

Q. About when and how often?

A. Usually over the week-ends when the children's school——

Q. When the children——

A. Didn't have to be at school.

Q. Did the same condition apply as to 1926 and 1927?

Mr. Gray: That is too general. I must object to it.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. It did. And then always on the nights—always when they had a vestry meeting at Christ Church, we always, of course, went after that. And then——

Q. Go ahead.

A. Of course, other times.

Q. How frequently were those vestry meetings of which you spoke?

A. I think they were twice a month. I am not positive. Mr. Lewis will be able to tell you.

Q. Now, when you returned from abroad, Mrs. Dorrance, where did you go in 1926, if you recall?

A. We went to Radnor for two days. I think it was about two days. And then went to Cinnaminson with the children.

Q. And then from Cinnaminson, where did you go?

A. We went to Jamestown in 1926.

Q. And you stayed in Jamestown, until when?

[fol. 578] A. Well, some time the first part of September, I don't remember the exact date.

Q. When I say you, I mean you and the Doctor and your family. When you returned from Jamestown, where did you go?

A. We went to Cinnaminson.

Q. And stayed there how long?

A. Until the children's school opened.

Q. And then when the children's school opened, you went——

A. To Radnor.

Q. To Radnor. Now the following year, did you go abroad?

A. We did.

Q. That is, when I say you, did you and the Doctor go abroad?

A. We did.

Q. Do you recall when, about?

A. Well, it was always in the spring, because Dr. Dorrance wanted to be home for his busy season which was the summer. It was either April—some time in April that we usually sailed. Occasionally we sailed the last of March.

Q. When you returned where did you go?

A. I think that we probably did the same thing; went back and collected the children who were still at school and went to Cinnaminson and then to Bar Harbor.

Q. To Bar Harbor, to a cottage there?

A. Yes, to a cottage there.

Q. And then how long did you stay at Bar Harbor that year?

A. I would say until about the 10th of September.

[fol. 579] Q. Were the servants taken from Radnor with you?

A. They were.

Q. To Bar Harbor?

A. To Bar Harbor?

Q. Yes.

A. Yes, they were.

Q. Did you occupy a house up at Bar Harbor?

A. Yes.

Q. Was Radnor open or closed?

A. It was closed for every year except the first year, because we had no place the first year to let the servants go to and I couldn't discharge them all for the summer.

Q. You couldn't turn them loose if they were any good. You wanted to keep them certainly. When you returned from Bar Harbor, where did you go?

A. To Cinnaminson.

Q. And you stayed there how long?

A. Depending upon the time that we got there until the time that the children's school opened, Mr. Hannum.

Q. You came back there until the children's school opened?

A. Yes, school opened.

Q. And then went on back to Radnor?

A. Yes.

Q. Now, from anything that you know of your own knowledge or from any statement that Dr. Dorrance ever made to you while you were at Bar Harbor that year——

A. Which year?

Q. The second year—the first year that you went to Bar [fol. 580] Harbor, did Dr. Dorrance come on East here to Camden?

A. To Camden.

Q. Or to the plant at Camden?

A. He did.

Q. From your own knowledge or from anything that he may have said to you about that, about now many times did he come down here to the plant at Camden?

A. The first year, very frequently.

Q. By frequently, by very frequently, what do you mean, how often?

A. Well, he spent more time down at Cinnaminson——

Mr. Gray: I must ask that that be stricken out. She is not asked anything about Cinnaminson. She is asked whether from her own knowledge or information given about Dr. Dorrance's home trips to Camden. I raise no ob-

jection against that. I asked that her statement that he spent time at Cinnaminson be stricken out.

The Court: Never mind about that; just ask about the Camden business.

Mr. Gray: Will your Honor strike out that portion of the answer.

The Court: Strike out the answer. Now go ahead.

A. May I have the question again.

By Mr. Hannum:

Q. What I asked you was this: While you were at Bar Harbor the first summer, did Dr. Dorrance go back and forth from New Jersey to Bar Harbor?

[fol. 581] A. He did.

Q. I asked you how frequently?

A. I suppose he came about four or five times to Bar Harbor during the summer.

Q. From your own knowledge or from anything that Dr. Dorrance may have said to you, where was he, where did he live when he wasn't living at Bar Harbor?

Mr. Gray: That is objected to.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Hannum:

Q. You may answer.

A. At his home at Cinnaminson.

Q. Did he, that year, spend more time at Cinnaminson or Bar Harbor?

Mr. Gray: If your Honor please, that is objected to. This lady was at Bar Harbor.

The Court: That is objectionable. I sustain the objection.

Mr. Gray: That involves strictly speaking the previous answer, which is precisely the same thing. This lady testified that she was at Bar Harbor; that he came to Cinnaminson.

The Court: She testified that is what he told her.

Mr. Gray: Then, on my theory, I move to strike out that answer.

The Court: Objection overruled. Exception. Motion overruled. Exception.

[fol. 582] (Bill sealed for the Commonwealth.)

Mr. Hannum: May I put my question another way?
The Court: Start another question, yes.

By Mr. Hannum:

Q. Where did Dr. Dorrance spend most of his time during that summer, if you know?

Mr. Gray: That is objected to. She was at Bar Harbor and couldn't possibly know where he spent his time.
The Court: If you know from anything that he said——
Mr. Gray: I object to that, because if it was from that, then it was hearsay.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. I think he spent most of his time at the factory.

By Mr. Hannum:

Q. Where, if you know, from anything that he said to you, or of your own knowledge was he living when he wasn't at the factory?

Mr. Gray: That is objected to.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. At Cinnaminson, New Jersey.

[fol. 583] By Mr. Hannum:

Q. Now, I understood when you came back from Bar Harbor that year, in 1927, you came to Cinnaminson?
A. We did.
Q. Then from there, where did you go?
A. To Radnor.
Q. And when did you go there, the time?
A. Well, the last of September or the first day or two in October.
Q. Were you abroad that year, 1928?
A. We went abroad every year from 1922 until my husband's death.

The Court: That is ten times she said that.

By Mr. Hannum:

Q. When you came back from Abroad in 1928 where did you go?

Mr. Gray: Are you jumping from the fall of 1927 to 1928?

By Mr. Hannum:

Q. Answer my question, please.
A. We went to Radnor and then to Cinnaminson.
Q. And then where?
A. And then to Bar Harbor.
Q. And from Bar Harbor where?
A. To Cinnaminson.
Q. Was Dr. Dorrance at Bar Harbor all summer that summer?
A. Is this 1928 you are speaking of?
Q. Summer of 1928, yes?
[fol. 584] A. 1928, he was not.
Q. From your own knowledge or from what he may have said to you, where was he living when he was not at Bar Harbor?

Mr. Gray: That is objected to.
The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth)

A. At Cinnaminson.

By Mr. Hannum:

Q. Where did your family come when they left Bar Harbor that year?
A. To Cinnaminson.
Q. And the same and customary practice was followed when they went to Radnor at school time for the children?
A. Yes.
Q. Now, the year 1929, was or was not the same and customary practice followed as to Radnor, Cinnaminson, Bar Harbor and return or was it changed?
A. We were in Europe in the fall of 1929, and I think we returned to Radnor because I am sure, I am positive

that the children's schools were open and our family was there then.

Q. Did you go to Cinnaminson that winter as had been your practice and custom?

A. Yes.

Q. What about the next year, Mrs. Dorrance, 1930.

A. 1930?

Q. Yes.

A. My husband was more often in Bar Harbor on account of his health and we left there the 14th of September [fol. 585] and arrived in Camden the 15th. We were met at the station by Mr. Oliver Willetts, and my husband rode with him directly to Cinnaminson; and I, and the small children went in another car; and it was a very hot day and my husband sat on the porch. Shall I continue——

Q. Yes.

A. My brother-in-law came out to see him in the afternoon and stayed for dinner. When he left that night he said that he really thought that he was very—in very good condition; and that if he took things quietly and didn't go to the office he was sure he would be alright; and the next morning he was sitting to be shaved and he had an attack. His brother was telephoned for and the other doctors.

Q. Was he at the plant at all, Mrs. Dorrance, from the time that you came down from Bar Harbor until he went over to Cinnaminson?

A. Do you mean when he returned in 1930?

Q. Yes.

A. He was never near there. He never went there. He went directly from North Philadelphia Station across the Palmyra Bridge. Of course, we were both in two cars. We went together, I mean we followed each other and went directly to the house. He was not at the factory.

Q. Did Dr. Dorrance ever state to you, if he lived, what was to be the eventual future of the place at Radnor?

Mr. Gray: That is objected to.

The Court: What was the question?

[fol. 586] By Mr. Hannum:

Q. Did Dr. Dorrance ever state to you what he was eventually going to do with Woodcrest, the place at Radnor?

Mr. Gray: That is objected to.

The Court: Objection sustained.

Mr. Hannum: Well, if your Honor please——

The Court: Unless it has something to do with domicile.

Mr. Hannum: That is the purpose, to show what he was using it for and what he proposed to do with it after that use was at an end.

Mr. Gray: There is nothing of that kind in issue in this case. It isn't relevant to this and it is immaterial.

Mr. Hannum: My contention, of course, is, if he acquired this place for a particular purpose that he may state what that purpose is and he may likewise state, to show his intention, what he is going to do with the particular thing or property when that purpose has been served and is at an end.

The Court: In the first place, he would have nothing to do about that because the title would be in him and his wife, no matter what his intention might have been.

Mr. Hannum: That might be; but he stated what his intention was.

The Court: I will sustain the objection and give you an exception.

(Bill sealed for the Executors.)

[fol. 587] By Mr. Hannum:

Q. After Woodcrest was purchased, did Dr. Dorrance ever make any statement to you about where he considered his domicile or home?

Mr. Gray: That is objected to.

The Court: Objection overruled. Exception.

(Bill sealed for the Commonwealth.)

A. He said that he was always going to have his residence in New Jersey on account of his interest in his business there; and that it was too far and inconvenient for him to live permanently any place in Pennsylvania.

Cross-examination.

By Mr. Gray:

Q. When you came to Philadelphia to live in the fall of 1909, you went to 1716 Locust Street, did you not?

A. I did.

Q. And in order that you will understand my questions, all the way through when I say "you" I mean you and Dr. Dorrance, unless I indicate to the contrary.

A. Yes.

Q. You remained there, aside from such trips as you may have made until November, 1909, that is correct?

A. Remained from—I remained until November, 1909? I went there in 1909.

Q. You went there in the fall of 1909 and you remained there until March, 1911, that is correct?

A. Yes, it is.

[fol. 588] Q. And during that time or period of time, though you may have made trips, you had no other home than 1716 Locust Street, in Philadelphia?

A. We didn't consider it our home, Mr. Gray, because we spent so many months of the year down at the Brighton Hotel at that time. We always were there for a month at Easter; and then for at least two and a half months during the summer; because it was so easy for my husband to commute and my children would be at the sea shore.

Q. Easier from Atlantic City than Radnor?

A. I wasn't at Radnor then.

Q. I know that.

A. Yes, he made it in an hour.

Q. I think two witnesses said it took fifty-five minutes from Radnor, and he made it in an hour from Atlantic City?

A. He made it from the hotel. He said he made it in an hour from the Hotel Brighton to the factory and have a car meet him at the station.

Q. During the time from November, 1909, until March, 1911, had you any other permanent home than 1716 Locust street, Philadelphia.

A. None.

Q. You said in the course of your examination that during the time that you lived at 1716 Locust street you were looking around for a place; is that correct?

A. We were.

Q. During what period of time from the fall of 1909 until the spring of 1911 were you looking for a place. Was it during all of that off and on?

A. No, sir. It was the first year, because my husband purchased at that time—we—in 1910, I think it was—we decided on—and the purchase of the property belonging to [fol. 589] the Parry's, to Mr. and Mrs. Williams, who was a Miss Parry, was made. I am not exactly certain.

Q. We don't want to confuse you in the matter of dates, that has been used here, in 1909?

A. It was after we moved in 1909 with my brother-in-law that we were looking for a house and I am positive that it was when the house was being remodeled. That is the reason we went back to him the next year and inconvenienced him very much, I am very sure.

Q. Was that in 1909 Dr. Dorrance found this place at Cinnaminson?

A. I think it was 1910 after the first of the year that we found it.

Q. That was a property that was adjoining the farm belonging to the Campbell Soup Company, wasn't it?

A. No, sir. At that time the Campbell Soup Company didn't own a farm of any kind, I think.

Q. Had no farm at that time?

A. At that time, no, sir.

Q. Was there a house erected on the place?

A. The house that we live in now.

Q. There was a house erected?

A. There was a house erected on the place.

Q. And Dr. Dorrance bought the place?

A. He did.

Q. And that was as a result of your looking around for a home?

A. Yes.

Q. And then he conveyed to the Campbell Soup Company or to the Campbell Preserving Company the predecessor of the present Campbell Soup Company?

A. Yes.

[fol. 590] Q. Mrs. Dorrance, he never bought and kept the title to any property at Cinnaminson, did he?

A. No, sir.

Q. And then after this property at Cinnaminson was purchased, and then conveyed to the Campbell Soup Company, which the record of the deeds as introduced by your counsel show, these would show it was done in December, 1909?

A. Yes.

Q. You didn't move in there until some time in spring or summer of 1911, did you?

A. It was because the house was being remodeled.

Q. I am perfectly willing—I was going to ask the reason; but the fact is you didn't move in there until sometime in 1911; that is correct?

A. That is correct; the 7th of May, 1911.

Q. At that time you had how many children?

A. I had two children.

Q. When you moved into Cinnaminson and opened it as a home, how many servants did you at first have in Cinnaminson?

A. How many servants we had?

Q. Yes.

A. We had three servants; three house servants and two nurses. We had a butler, a cook and a house girl.

Q. Any others?

A. No, sir.

Q. You increased later the number of servants that you had in Cinnaminson?

A. We did, as my husband acquired more wealth.

Q. That is very natural. And up to what maximum in the number of servants did you have in later years, did you have at Cinnaminson?

[fol. 591] A. We had a butler, and a cook, a kitchen maid, and an upstairs girl; and a woman that came in and did the laundry and two governesses for the three girls.

Q. Is that all. Did you have some outside servants?

A. We had a chauffeur and a man that did the porches and took care of the furnace.

Q. What was the greatest number of servants that you had at any time while you were living at Cinnaminson, at any one time?

A. Seven, eight—eight and the houseman. By the houseman, I mean the man that took care of the fire and the porches.

Q. Did you have a gardener also?

A. We did.

Q. Besides those that you have enumerated?

A. The garden was run in connection with the Campbell Soup Company—their operations.

Q. You mean it was the Campbell Soup Company employee who kept and looked after your lawns and trees; is that what you mean?

A. I think my husband—I think that he was on the Campbell Soup Company payroll.

Q. In other words, you had in addition to him, whether you paid him or whether the Campbell Soup Company paid him, in addition to this man there was somebody else who looked after your lawns and your trees and your garden?

A. Yes. And all of his repairs to the building—I think that is the reason that he wanted it that way, because the factory paid all the repairs and did all the painting and papering and everything of that kind.

Q. In other words, he could lease it cheaper than he could run it himself?

[fol. 592] A. Yes.

Q. While we are discussing the question of expenses of the maintenance of the house, and I am talking about now down to 1925, the company paid all your telephone bills, did they not?

A. No. I think they were paid from my husband's office. I am sure; because he used to object very seriously to some of the bills.

Q. Of course, your husband's office, your husband's was the office of the corporation.

A. I think our personal bills like dressmaker bills, I think they went in—and I think the telephone bills were——

Q. Along with the other personal bills?

A. Went with the personal bills.

Q. You are not sure?

A. I am not positive, but I am almost positive.

Q. You had two telephones in the house, didn't you?

A. No, sir. We had one—one downstairs and one in our bedroom.

Q. I mean two separate numbers; I am not talking about extensions?

A. No, sir.

Q. At no time?

A. No, sir, at no time.

Q. You had gas in the house?

A. Yes.

Q. Was your gas bill paid by Mr. Dorrance or by the company?

Mr. Hannum: I don't see the relevancy of this whether the gas bill was paid by the company or by the Dorrances. What is the difference?

[fol. 593] The Court: I don't see what it has to do with it, but still, there is no objection.

A. I don't know, but I imagine it was paid by Dr. Dorrance with the personal bills.

By Mr. Gray:

Q. You have electricity in the house?

A. It was installed when the house was purchased.

Q. At some time between 1909 and 1911 when you moved in?

A. Yes.

Q. Were the electric light bills paid by the corporation or by Mr. Dorrance, if you know?

A. I don't know, Mr. Gray.

Q. Do you know what rent Dr. Dorrance paid the corporation for that property in Cinnaminson prior to 1925?

Mr. Hannum: I object. What difference does it make.

The Court: I overrule the objection. Exception.

(Bill sealed for the executors.)

By Mr. Hannum: If you know?

The Court: Yes.

A. I don't know, Mr. Gray.

By Mr. Gray:

Q. It was never told you by Dr. Dorrance?

A. No, sir.

Q. You never discussed it with him?

A. I never discussed it with him.

[fol. 594] Q. When the property was purchased at Woodcrest, Radnor, did you say the time that was purchased was 1925; in the spring, wasn't it?

A. Yes.

Q. There were several purchases made which went to make up the site at Radnor, was there not?

A. Not at the same time.

Q. Whether they were made at the same time or not, there were several purchases made of ground and buildings there, adjoining ground and building.

A. In 1925 there was one purchase.

Q. Only one purchase in 1925?

A. As far as I know.

Q. That was the purchase of what was called the Munn property; is that so?

A. Yes, it was.

Q. How many acres was in that plot of ground, do you know?

A. I think 118, I am not positive, but I think it was that.

Q. Can you tell us off hand how many acres the place ultimately grew to?

A. I imagine—I think there were something like thirty acres acquired later, to protect the boundaries; because it was a family—the Munn property was—it was a family division, then when the Mills and Mr. Paul sold to people who expected to develop their property, Dr. Dorrance bought the property that would prevent it.

Q. Thirty acres between so as to protect his own place?

A. No. At parts of his boundary.

Q. But he bought no more than thirty acres?

A. I don't think so. I mean it may have been a little [fol. 595] more. It may have been a little less. I don't know. But I haven't any idea about the exact amount.

Q. Did he make more than one extra purchase after he purchased the original property?

A. Yes, he bought twice. Mrs. Mills sold her property soon after that.

Q. You mean that he made two other purchases after the original purchase?

A. Yes. I think it was just two. He may have bought a little corner.

Q. What did he pay for the properties that he purchased originally?

Mr. Hannum: I object.

The Court: Objection overruled. I will hear it. Exception.

(Bill sealed for the Executors.)

A. I don't know. I think it was $350,000. I think it was $350,000. But I am not positive.

By Mr. Gray:

Q. Do you know what he paid for each purchase that he purchased, which were contiguous to the original?

A. I haven't any idea but I think it was very much more in comparison for the acreage because they knew that he wanted to protect himself.

The Court:

Q. And they raised the price?

A. Yes.

[fol. 596] By Mr. Gray:

Q. Will you tell his Honor as to the entire investment that was made in regard to the house and other houses located thereon and grounds, at Woodcrest, Radnor, in all of these various parcels that he purchased?

A. I am certain I couldn't, because I have no idea how much he paid for the other properties that he bought.

Q. Can you tell me when he bought the other properties that adjoined the original property which he purchased in the spring of 1925. Can we get at it in this way?

A. Would you ask me that question again?

Q. I asked you whether you can tell me when he bought the other property. You told me that he bought several of them. Now, I will change that question to this: can you tell me when he bought the last bit of property that he added to Woodcrest, in what year?

A. I think it was the last of 1928 or 1929; but I am not positive.

Q. Mrs. Dorrance, when you moved from Cinnaminson to Radnor and slept there as you said for the first time in November on the night of November 14, 1925, did you take any servants with you?

Mr. Hannum: I object.

The Court: Objection overruled. Exception.

Mr. Hannum: I object to the word "move" in the question.

Mr. Gray: It is not significant.

The Court: Went from one place to another. He did move; of course he did.

[fol. 597] A. I took the two governesses and the chauffeur.

By Mr. Gray:

Q. Did you take any other servants?

A. We left them all in the house.

Q. Are those two governesses no longer with you?

A. No, they are not with me.

Q. Will you give me their names?

A. One of them was named Katherine Lithgow.

Q. Is she living?

A. She is living.

Q. Can you tell me where she is living?

A. She was in Newport this summer with the——

Q. Where is she now?

A. I can tell you the family that she was with because she wrote my boy a letter and I answered it after he was operated on this summer. I am trying to think who the other woman was. I can't remember the other woman's name, but I will find out for you if you think it is necessary.

Q. Do you know where Katherine Lithgow lives now?

A. I know where her sister lives because she is working at Wanamaker's store.

Q. Where does her sister live?

A. I don't know her residence, but I could find out for you.

Q. What is her sister's name?

A. I haven't any idea. I just know that she was a sister of Katherine.

Q. The other girl you don't remember?

A. I don't know. But if you wish me I will find out for you.

[fol. 598] Q. I won't bother. How long did Katherine Lithgow, after you moved to Radnor, remain with you?

A. Two years, I should say.

Q. How long did the other remain with you?

A. I don't remember the other woman.

Q. You don't remember how long she remained with you?

A. No, sir. I really don't remember anything about her. I will ask my children what they remember.

Q. What is the name of the chauffeur?

A. Charles Hasker.

Q. Is he still with you?

A. Yes.

Q. Did you discharge the servants, or did you leave all the others at Cinnaminson?

A. I didn't discharge them. The man named Michael McDevitt, who is my butler, and whom I wished to take with me for the winter, at Woodcrest, said that the house was too large and he didn't want to undertake it and he has been living with—I don't know whether she is a Baroness or Countess von Holstein since then, you can get in touch with him there.

Q. He left?

A. He left me because he didn't want to undertake it.

Q. What were the names of the servants that you left in Cinnaminson, in 1925?

A. The cook is Mary McLaughlin.

Q. Is she living or dead?

A. I heard she was run over by a bus on the Lancaster pike the winter before last.

Q. After 1925, how long did she remain at Cinnaminson?

[fol. 599] A. She remained there three or four years, Mr. Gray. Three years, I should say.

Q. Was she discharged or did she leave?

A. She left because she had varicose veins.

Q. I don't want the reason.

A. I am telling you why.

Q. I don't want to go into that. She was not replaced with any one?

A. Yes, she was.

Q. With whom?

A. I don't remember who replaced her, but a woman—I don't remember whether it was some one came and weren't satisfactory or they didn't like the place, but the next cook that I remember that was installed was a woman named Mary Grimes.

Q. When did she come to you?

A. When?

Q. Did she succeed McLaughlin?

A. May be I had someone in between for a week or two, but I don't remember.

Q. When did Mary Grimes come there?

A. I don't know, but I can find out from the payroll.

Q. It was sometime later after the McLaughlin woman left, that is correct?

A. Yes.

Q. How long did Mary Grimes remain there with you?

A. She remained with me until during my husband's illness.

Q. You mean that she was actually at Cinnaminson up until some time in September, 1930?

A. She was there during my husband's illness and she left because she said the work was too hard.

Q. While he was there ill?

[fol. 600] A. While he was ill.

Q. You mean from the 14th of September to the 21st?

A. From the 15th of September until his death.

Q. Where is she living?

A. I have no idea. I never want to see her again.

Q. You have no idea?

A. I haven't the slightest idea. I was just about to say: naturally the house had a great many people in it; there were trained nurses and my son-in-law——

Q. While your husband was sick?

A. Yes, and one of the cooks from the factory came to assist but I don't know what was the matter with Mary.

Q. Let me take you back to 1925. You have given us the name of one of the servants that lived there at Cinnaminson as Mary McLaughlin. Now give us the name of any other servants you did leave at Cinnaminson in 1925?

A. Cecil Duffy was one; she only stayed a little while. She was very young.

Q. A week or two you mean?

A. No, sir. She stayed about two months, I suppose.

Q. Now then give me the name of any other servants that you left at Cinnaminson in 1925?

A. Mary. It has just kind of gone out of my head for a minute. She was the girl I said lived with me and went back to Ireland.

Q. We will assume that she has a last name and that she remained with you?

A. I know it almost as well as I know my own, because she lived with me for eight years.

[fol. 601] How long did she remain after you moved into the Radnor place?

A. She remained until 1928.

Q. Until 1928?

A. Yes.

Q. Can you give me the name of any other servants?

A. Bridget Kane.

Q. Before we come to Bridget Kane, let me see if I am correct about your testimony as to the other. The one girl remained with you for several months. The last girl that we have mentioned whose name has never been mentioned——

A. Mary Maroney.

Q. She remained until she was married in 1928?

A. I am not positive about 1928 but she stayed with me.

Q. And the McLaughlin girl remained with you possibly for—up until two or three years, and then you have some other in between of a temporary nature, and then the Grimes girl was with you who remained up until the time of your husband's death, or about that time, that is correct?

A. Yes.

Q. Now, isn't it true, other than those you have told us of, the only other inside servant that you had was Bridget Kane, isn't that true?

A. I don't understand.

Q. You have described these various women that were with you?

A. Yes.

Q. Then I asked you whether there were any other servants there in 1925 that you left at Cinnaminson. You mentioned Bridget Kane

[fol. 602] A. Bridget wasn't there then.

Q. She was not there?

A. But I got her back again. She had been with me. And I got her back again when this Cecile, this little Cecile Duffy left. She was away from me about two or three months.

Q. Were there any other house servants that you left at Cinnaminson when you went to Radnor in 1925?

A. There were not.

Q. So when you left there were three?

A. Yes, and the houseman.

Q. And of those three one left in a short time and was replaced by Bridget Kane?

A. Yes. Who had been with me before.

Q. And another left when she got married and was not replaced?

A. Yes. She was replaced.

Q. By whom? Give me the name?

A. Bridget Gallagher.

Q. How long did Bridget Gallagher live with you?

A. I think it was about a year she was with me. She was with me until after my mother-in-law's death.

Q. Which was in January, 1929?

A. Yes.

Q. Did you replace her at all in January, 1929?

A. No, sir, I didn't.

Q. So that after 1929 the only inside servants that were in the house were Bridget Kane and one other?

A. After 1925?

Q. After 1929, the only other servants in the house were Bridget Kane and one other woman, is that correct?

A. Yes.

[fol. 603] Q. And that continued to last down to the time of your husband's illness?

A. Yes.

Q. Is Bridget Kane in court?

A. Are you asking me?

Q. Yes.

A. I haven't any idea.

Q. She is still employed at the house at Cinnaminson, is she not?

A. She was there Sunday when I was there.

The Court: We will take a recess until two o'clock.

Two o'clock. Court convened.

ETHEL M. DORRANCE, recalled for further cross-examination.

By Mr. Gray:

Q. When did you last see Bridget Kane? You answered that.

A. I said on last Sunday.

Q. How old a woman is she?

A. I have no idea. But she is a very old woman and has a very queer walk.

Q. Quite deaf, also?

A. I don't think that she is particularly deaf.

Q. Very hard of hearing?

A. I don't think so. I think she is a little deaf, like a person of her age would be.

Q. Is she a woman of seventy?

A. Well, from her looks I think she is, but from the amount of work she does, I think she must be younger.

Q. Since your husband died in September, 1930, down until the first of January, 1931, was there any other servant in the house than Bridget Kane?

[fol. 604] Mr. Hannum: I object; what does it amount to whether there were any others or not. We are talking about his home, if your Honor please.

The Court: This is after the death of the husband?

Mr. Gray: Yes.

The Court: What difference does it make?

Mr. Gray: So that we can make a comparison of the staff at different times.

The Court: Why should you make any comparison with any time after the death of the husband. He had nothing to do with it after that. He had nothing to do with the house personally after he died.

Mr. Gray: I agree with you, but there have been a large number of questions in this case that the husband had nothing to do with.

The Court: What is the object to this inquiry.

Mr. Gray: So that I may show first the entire history of the servant question with respect to Cinnaminson from the time that he occupied Cinnaminson in 1911 down to the present time.

The Court: Is it objected to.

Mr. Hannum: I object to it.

The Court: The objection is sustained. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Gray:

Q. When you came to Radnor in 1925, did you take any of the servants that had been connected with the property prior to your occupancy of it?

[fol. 605] A. Yes. I had a Mrs. Holgraves as housekeeper for a few months.

Q. Were there any others?

A. No, sir.

Q. Either the house or grounds?

A. My husband's personal man who didn't live in the house at Camden. I forgot him. I thought afterwards that you probably meant him when you kept asking me if there was another name. My husband's valet, a man

named Herbert Whiteser, lived for eighteen years with my husband, and then he went out to Woodcrest, I think for about ten days, or two weeks. He was a married man and had three children, and when we were at Cinnaminson lived there for the entire year. My husband sent for him every morning and sent him back every night.

Q. Where did he live?

A. He lived in Camden, or outskirts of Camden, near the Burlington Pike, where the Burlington Pike came into Camden.

Q. You mean he took him with him ten days and he found that Radnor was too far from his home?

A. No, my husband took him out there to have his clothes arranged, and then he put him in charge of the cafeteria that was connected with the Campbell Soup Company and my husband got another man.

Q. My question originally was as to whether there were any other servants that had been—prior to that time—connected with Radnor, that is that were connected with Radnor before the time you occupied it, that you took over?

A. You mean house servants or people?

Q. House or ground people?

A. Well, the overseer, Mr. Charles I. Stratton.

[fol. 606] Q. He had been with the Munns, prior to that time?

A. Eight years, I think, he was with the Munns.

Q. You kept him with you?

A. He is now taking charge of Woodcrest.

Q. I say you kept him, he is still with you?

A. Yes.

Q. Is he here in court?

A. I think he told me he was excused to-day. He was here all day yesterday.

Q. Are those the only servants that were connected with Woodcrest, Radnor, before you occupied it, that you took when you occupied it?

A. I think there were some men that worked on the place. I know there were. There was a man named David somebody. There were several that I just can't remember their first names.

Q. Aside from the servants that you took with you from Cinnaminson and the servants that were connected with

the place that you adopted, so to speak and kept with you, how many other servants did you add to your staff there?

Mr. Hannum: That is objected to. What is the relevancy of the servant question?

The Court: Objection overruled. Exception.

(Bill sealed for the Executors.)

A. How many have I now?

By Mr. Gray:

Q. How many did you add to your staff right after you went there in 1925?

A. I doubled it because the house was twice as large.

[fol. 607] Q. How many servants did you have on the first of January, 1926?

A. I think thirteen.

Q. What is the highest number that you had there since that time?

A. Sixteen.

Q. How many have you there now?

A. Sixteen.

Q. Now, how long have you had sixteen servants on the place?

A. Mr. Gray, do you include the outside people? Because I have a great many more than that. I thought you meant the house people.

Q. You have sixteen in the house alone?

A. Yes.

Q. Let me address my question to those sixteen servants then, and ask you for how long you have had sixteen servants in the house?

A. I should say three years.

Q. In other words, from sometime in the fall of 1928?

A. I might have had them before then.

Q. But from at least since that time?

A. Yes.

Q. Now, how many servants have you on the grounds or in your place anywhere in addition to the sixteen that you have in the house?

A. I haven't the least idea.

Q. Are they numerous?

A. Yes. I think there are ten or twelve men.

Q. Ten or twelve men?

A. Inclusive of everyone.

Q. You have had these ten or twelve men since you have occupied the place?

[fol. 608] A. No, sir; not all the time. I think there are sometimes less. I know there have been less than that. I mean that is the maximum.

Q. And sometimes more?

A. Never more than twelve so far as I know.

Q. The minimum of what number are kept on the ground?

A. I would say about eight.

Q. When you were either going to Europe or to Bar Harbor or to Jamestown or to Cinnaminson or any other place, are your men or servants that are employed on the grounds allowed to remain there and work. Do they continue?

A. The house—the grounds are kept up all the time, yes.

Q. Your answer to my question is yes, that those people are employed all the year around and at all times?

A. Yes.

Q. They are not discharged or relieved temporarily?

A. Some men are taken on for the summer.

Q. Some additional men?

A. No, not more than twelve.

Q. Not more than twelve. But if you happen to have eight in the winter, in the summer time no matter where you have been four others are taken on?

A. I don't know that there are necessarily four.

Q. We won't consider that you are giving the exact figure. You gave it approximately?

A. Yes.

Q. With the sixteen servants that are in the house, instead of asking you generally about them I will be a little [fol. 609] more specific. I believe you testified that you went abroad in the spring of 1926?

A. I did.

Q. There was no change of conditions at your home at Woodcrest——

Mr. Hannum: I object to the word "home".

Mr. Gray: When I use those words your Honor will draw no conclusion. They are not intended to persuade you to such conclusion at all.

Mr. Hannum: Nor for the witness to adopt them. If he makes that condition, I have no objection.

The Court: Go ahead, Mr. Gray.

Mr. Gray:

Q. There was no change in the conditions of the servants when you went to Europe. They simply all remained there as they were, did they not?

A. Yes. I couldn't discharge them.

Q. From November, 1925, when you went to Woodcrest in Radnor until you went to Europe in April, 1926, did you go to Cinnaminson at any time?

A. Why, yes.

Q. Did you go to Cinnaminson at any time accompanied by Dr. Dorrance?

A. He always accompanied me. I mean he always went or spent the night there. He always spent the night there.

Q. You mean then——

A. We were both together in this part of the country.

Q. I am confining myself to the time between the fall of 1925 and the spring of 1926. Do you mean by that that [fol. 610] there was no time—that there were no times that you were at Cinnaminson that Dr. Dorrance was not with you; is that correct?

A. I was there in the day time alone.

Q. Yes. How many times did you go to Cinnaminson during that period of time?

A. I couldn't tell you that, Mr. Gray.

Q. After November 14, 1925, which was the first night that you occupied the property at Woodcrest, when was the first time you went to Cinnaminson?

A. I don't know, Mr. Gray.

Q. You mean that you can't tell either the first time that you went there after November, 1925, nor how many times you went there between November, 1925, and April, 1926?

A. I couldn't.

Q. Did you go there any time between November, 1925, November 14, when you occupied the property at Woodcrest and the first of January, 1926?

A. I am positive that I did.

Q. When?

A. I just told you, Mr. Gray, that I don't remember any special trips.

Q. Did you go there at any time between January 1st, 1926, and the time you went to Europe in April, 1926?

A. I did.

Q. Can you tell me when?

A. I don't know, Mr. Gray.

Q. Can you tell me how many times?

A. I don't know, Mr. Gray.

Q. Did you at any time go to Cinnaminson between November, 1925, and April, 1926, and take with you any of your servants from Woodcrest?

[fol. 611] A. Yes.

Q. How many times?

A. I couldn't—I don't know.

Q. Name any servants that you took with you?

A. The man that follows Herbert Whitezer was named Sidney something and he went with my husband always and waited on the table until he left us and got married. And then Peter Orloff came with my husband.

Q. Sidney was your husband's valet?

A. Yes.

Q. When did he leave you?

A. He was with my husband about three or four months. He is now with Mr. Jay in Washington—Mr. Augustus Jay. He was in his place at Bar Harbor last summer.

Q. Then sometime in the early part of 1926 Peter Orloff came to work for your husband?

A. I think that was about the date.

Q. Is that the only servant that you ever took with you to Cinnaminson during that period of time?

A. No. The nurses used to go there.

Q. With whom?

A. With me and the children; and when I didn't go, with my mother with the children.

Q. Your mother wasn't over there in 1925 and 1926?

A. She went over very often. She would go there with the children, very often, when Dr. Dorrance and I would dine out on the main line, and they would go over on the week-end.

Q. You mean you would remain at home and they would go?

A. I would remain at Woodcrest if we dined some place [fol. 612] on the main line Saturday night and my mother would go over with the children and the nurses.

Q. When did you come back from Europe, in 1926?

A. I don't know the exact dates, but Miss Brinton has them written down.

Q. Who?

A. Miss Brinton, Dr. Dorrance's secretary.

Q. Can you tell me the month when you returned?

A. It was either sometime in June, so far as I can remember——

Q. Did you then go to Radnor?

A. I think we went to Radnor for a few days and then went to Cinnaminson.

Q. For how long?

A. Until we went to Jamestown.

Q. For how long?

A. I don't remember, Mr. Gray.

Q. You recall that it was Radnor for a few days; now, how long were you in Cinnaminson when you went there?

A. I would say about ten days.

Q. Then to Jamestown?

A. Then to Jamestown.

Q. When did you return from Jamestown that summer?

A. Is this 1926?

Q. Yes.

A. Either just before or after Labor Day. I don't remember whether it was——

Q. Did you take your servants with you to Jamestown?

A. No, sir, we didn't. Because, I told the Court we lived in a hotel that summer.

Q. Did you leave your servants at Radnor?

[fol. 613] A. I did.

Q. Leave the house open?

A. I left the house open.

Q. All summer?

A. Yes.

Q. In other words, there was no change in conditions at Woodcrest at Radnor during the summer of 1926 than what it had been?

A. The rugs were put away, such as that.

Q. Such as you may do any summer time?

A. No, we leave the rugs down all summer when we are at home all summer. They are always down at Cinnaminson. They are never taken up except to clean.

Q. You took the rugs up and left the servants there the same as you would do at any time when the main part of the house was not being occupied in the summer?

A. Yes.

Q. And where the servants quarters were elsewhere than in the main part of the house?

A. Yes.

Q. Then when you returned from Jamestown you went where?

A. I am almost positive we went to Cinnaminson.

Q. You are not sure?

A. I am not sure. But I am almost positive.

Q. And remained there long enough to have the rugs down and fix the house in shape?

A. Not at all.

Q. Then you went to Radnor?

A. Because, Mr. Gray, August and September are very busy times at the factory and my husband, if for no other reason, always was around that part of the country, so [fol. 614] that it wouldn't take him away, to come back and forward, because he was at the office very late and he went very early in the morning.

Q. In other words, he wanted to be as close to his business as possible during that period of time?

A. Yes.

Q. When you went back to Radnor in the fall of 1926, you stayed there until you went to Europe in the spring of 1927?

A. We went fishing in Florida and then we would go over to Cinnaminson.

Q. You made visits over to Cinnaminson?

A. Yes.

Q. You said something about your mother living with you. Was it your mother or Mr. Dorrance's mother?

A. My own mother.

Q. She lived with you at Radnor?

A. She lived with me wherever I lived.

Q. She lived with you prior to the time that you went to Radnor in 1925 when you were at Cinnaminson?

A. She lived with me at the Robeson Apartments in Camden.

Q. Then from the Robeson Apartments she lived with you at 1716 Locust Street?

A. Yes.
Q. Then she lived with you at Cinnaminson?
A. At Cinnaminson.
Q. Then when you came to Radnor in the fall of 1925 she came there with you?
A. Yes, she did.
Q. Is she living, Mrs. Dorrance?
A. No, she is not.
[fol. 615] Q. How long has she been dead?
A. She died in November, 1928.
Q. Did Mr. Dorrance's mother ever live with you?
A. She lived at Cinnaminson at the time my sister-in-law was ill there.
Q. She never lived at Radnor?
A. She never lived at Radnor.
Q. Did your sister-in-law that you refer to ever live at Radnor?
A. No, sir, she never lived at Radnor.
Q. Do you know when it was that Mr. Dorrance's mother and sister, the two persons we heard referred to, went to Cinnaminson?
A. I don't know the date, but it was in August.
Q. Do you know the year?
A. I do know the year; but I don't know the date of the month that they went.
Q. August of what year?
A. August of 1926.
Q. Then they both remained there until they died, isn't that correct?
A. My mother-in-law went with my sister-in-law, Mrs. Hood, to Cinnaminson and then they thought it was very depressing for her, because she was very ill and she went to visit my other sister-in-law at San Diego for several months during that winter and then she returned to the house at Cinnaminson.
Q. That is your mother-in-law?
A. That is my mother-in-law, my husband's mother.
Q. Well, she remained at Cinnaminson until she died?
A. She.
Q. And the sister remained there, your sister-in-law, until she died, at all times?
[fol. 616] A. Yes, she did.

Q. Now from my recollection of testimony other persons gave in this case, your mother-in-law lived there until she died in January, 1929?

A. Yes.

Q. When did your sister-in-law die?

A. She died in June.

Q. 1928?

A. My mother-in-law died in January, 1929, and my sister-in-law died in June, 1928, when Doctor Dorrance and I were in Bad-Nauheim, Germany.

Q. You especially avoided going to Cinnaminson during the time that they were there?

A. I didn't especially avoid going, but there wasn't very much room with two or three trained nurses and two very ill women. Our children went there as much as they could. Dr. Dorrance and I went there because his room—our room was always kept intact.

Q. Isn't it a fact that you especially avoided going to Cinnaminson from 1926 until your mother-in-law died in January, 1929?

A. Not at all.

Q. Now the summer of 1927 you were at Bar Harbor. That is meant for a question.

A. I am just trying to think how many—no, we were at Jamestown that year.

Q. Jamestown in 1926 the first summer after you went to Radnor. Were you also at Jamestown the second summer?

A. We went to Jamestown several years. Will you just let me think a minute.

Q. Certainly—suppose we pass the question up and put it to you another way. When you went away for the sum-
[fol. 617] mer in 1926 you have already told us you left the servants there and the house open?

A. Yes.

Q. When you went away in the summer of 1927, whether it was Jamestown or Bar Harbor, did you take any of your servants with you or did you leave the house open?

A. The years we were at Bar Harbor the house was entirely closed, and every servant, except the night watchman who was one of the men that worked on the place and slept in the house on account of the fire insurance, were taken with us. The years we were at Jamestown, I never

took any servants except the nurses because we lived at a hotel there. We never had a cottage.

Q. Tell me how many years you were at Jamestown since you took the house in Radnor in the fall of 1925. You don't need to designate the year. How many of them?

A. I think there was one—but thinking back how many years I was in Bar Harbor—well, that must have been two years.

Q. Two years at Jamestown?

A. Yes.

Q. Three years at Bar Harbor?

A. No, four years at Bar Harbor: thirty-one——

Q. You are including 1931.

A. 1931, 1930, 1929, 1928.

Q. 1927 and 1926 at Jamestown?

A. Yes.

Q. Now then, therefore when you went to Jamestown in 1927 you not only took the governesses with you, you left the house open?

A. I left it the same way as we had the year before.

[fol. 618] Q. So in 1926 and in 1927 in the summer time, as well as on the occasion when you went to Europe that year, your house was left open and with the same servants in it as when you were there?

A. Of course.

Q. Now, so I won't have to repeat, in 1929 and 1930, on each of the occasions when you went to Bar Harbor you took your servants with you?

A. Every one of them.

Q. So that for the period of time that you were in Bar Harbor where you had a home or house, whatever you called it—so I won't trespass by using the wrong name—you took all your servants excepting, as you say, someone that was necessary to remain there as caretaker of the house?

A. Well, he wasn't a caretaker; it was just someone to sleep there. No one really lived in the house. It was just a man sleeping in a bed there as say on account of——

Q. Keeping it occupied to comply with the provision of your fire insurance policy?

A. Yes.

Q. Did they go to Bar Harbor ahead of you, your servants?

A. We were always in Cinnaminson when we went up.

Q. Now, you see, Mrs. Dorrance, that doesn't answer my question, except by inference. They went up to Bar Harbor before you went up, the servants?

A. No, sir. They didn't.

Q. What do you mean then when you said you were in Cinnaminson when they went up?

A. Well, of course, we used to send them up in the car. Then the nurses and I always went up by train and I would [fol. 619] take some of them up in the train with me.

Q. What you did was, you sent your servants up there to get your house ready. In the meantime, you went to Cinnaminson?

A. No, sir. The house was always ready. They were rented houses and they were always supposed to be ready for occupancy when you arrived.

Q. Hadn't you found it necessary to do a great many things with those rented houses to make them fit for occupancy?

A. No, sir. They were fit; they are always in perfect order.

Q. Your servants always got up there before you did?

A. No, sir. I have gotten there first.

Q. You would get along without the servants for a few days?

A. Not a few days. For a day, probably.

Q. Dr. Dorrance was not at Cinnaminson in the fall of 1929, was he?

A. When we returned from Europe, we went there.

Q. I understand you didn't go to Europe until the 5th of October. I am talking about the time prior to your going to Europe. Was Dr. Dorrance with you prior to October 5, 1929, and in the fall of that year, at Cinnaminson?

A. Yes, I went down with him from Bar Harbor to Cinnaminson before he sailed.

Q. When?

A. Well, he sailed the latter part of September. And sometime the middle of September I went down with him. I don't know the dates, Mr. Gray.

Q. Then you both, both you and he, came from Bar Harbor together?

[fol. 620] A. Yes.

Q. You said a moment ago that he left you at Bar Harbor and came down here and then went to Europe?

A. I was there with him. It might not have been the day before or the date that he sailed. But I did come down that summer either the last part of August or the first part of September and stayed a day or two at Cinnaminson with my husband.

Q. What servants did you have there then. Nobody but Bridget Kane?

Mr. Hannum: Let her answer.

A. Of course, I always had Bridget Kane. I am trying to think who the cook was then. I think it was Mary Grimes.

By Mr. Gray:

Q. Then it was Bridget Kane and Mary Grimes. Those were the two that you did have at that time?

A. Yes.

Q. By the way, you say that Mr. Dorrance was there with you when you were there at Cinnaminson in the spring of 1929, also?

A. He was there after we came home from Europe and before we went to Bar Harbor.

Q. You were there before you went to Bar Harbor, at Cinnaminson, for a while?

A. Yes.

Q. For how long each year?

A. Yes, different times in different years.

Q. Won't you tell us the greatest length of time you ever stayed at Cinnaminson during any winter of this period?

A. At one time, you mean?

[fol. 621] Q. Yes.

A. I think between two and three weeks.

Q. That is the greatest?

A. Yes, at one stretch of time.

Q. Greatest since 1925?

A. I think so.

Q. And then when you were ready to come home, your house at Radnor was closed, did your servants leave at Bar Harbor the same time you did in these different years?

A. No, sir. I would leave and then they would leave.

Q. Approximately the same day, you mean?
A. Sometimes.
Q. Sometimes there was a day's difference?
A. Yes.
Q. And then went to Radnor didn't they?
A. Yes.
Q. You didn't take them to Cinnaminson?
A. I took some of them with me.
Q. Anybody more than the one man with Mr. Dorrance?
A. Yes.
Q. What other servants did you take along, did you ever take to Cinnaminson with you from Bar Harbor?
A. Annie—I can't think of her name. Well, she is—her name is Annie. She is the parlor maid. Her name has gone out of my head.
Q. The name is immaterial. You had to take her because you didn't have such a servant at Cinnaminson?
A. Yes.
Q. She is the only one?
A. No, sir.
[fol. 622] Q. Governesses?
A. Yes.
Q. The children went with you of course when you came back from Bar Harbor?
A. Yes. Unless they visited other people.
Q. Which they usually did, isn't that true?
A. No. The two older girls would go and stay with girls.
Q. Did either one of the two older girls after 1925 ever sleep at Cinnaminson?
A. Of course.
Q. Did they?
A. Absolutely.
Q. When you came to Cinnaminson and brought these servants with you in 1928, 1929 and 1930 can you tell me how long you stayed at Cinnaminson on each one of those occasions?
A. I couldn't.
Q. As a matter of fact, as soon as the servants had your Radnor house prepared, that is where you went?
A. No, sir; we didn't.
Q. But at any rate, after a short period of time you went to Radnor?

A. Yes. Different, varying times, depending mostly upon the children's school and the time of the year that we returned from Bar Harbor or Jamestown.

Q. During the winter of 1927 and 1928, during that period of time, it has already been shown by your own testimony and others your mother-in-law and sister-in-law were in the house at Cinnaminson. How many times did you go to Cinnaminson?

A. I have no idea, Mr. Gray.

Q. You can't answer the question?

[fol. 623] A. I never gave it any thought. I just used to go. I didn't keep a diary.

Q. But you can't answer the question: how many times?

A. No, sir. I couldn't.

The Court: She answered it. She said that she didn't know.

Mr. Gray: That is true.

By Mr. Gray:

Q. And during the time from the period when you left Cinnaminson in the fall of 1927 until you went to Europe in the spring of 1928, what was the greatest length of time you ever remained at Cinnaminson?

A. Mr. Gray, you say "left"—I never really left. Because everything that we had ever owned was there. We used to go backward and forward. We might spend a night——

Q. You had a great many things that you owned at Woodcrest?

A. Yes, a great many things.

Q. So that you might not misunderstand me, or quibble about the use of words: When you went out to Cinnaminson in the fall of 1927, after staying there a short time after your return from Bar Harbor and went to Radnor, between then and the time you went to Europe in the spring of 1928, what was the greatest length of time you ever remained at Cinnaminson?

A. I don't know if more than two nights at a time.

Q. Two nights was the utmost?

A. I think so.

Q. And unless you were away at Florida or Atlantic City or some other place away from this section, all of the rest

[fol. 624] of the time during that period you were at Radnor. That is so, isn't it?

A. Yes.

Q. And that also applies, does it not, to the winters of 1928 and 1929, and 1929 and 1930, without my taking you in detail over them?

A. Yes.

Q. After your mother-in-law died in 1929 you were at Europe twice in 1929—in the spring and the fall, weren't you?

A. Yes.

Q. You were at Bar Harbor in the summer?

A. Yes.

Q. Were you out to Cinnaminson in between the time that you were in Europe during the Spring of 1929 and the time you went to Bar Harbor in the summer of 1929?

A. May I ask you to repeat that question?

Q. Having gone to Europe in 1929 in the spring and having gone to Bar Harbor in the summer, I want to ask you whether at any time you visited Cinnaminson between those two trips?

A. Yes. When we came home from Europe.

Q. How many servants did you have in Cinnaminson then?

A. I had two.

Q. You had Bridget Kane and the cook, didn't you?

A. Yes.

Q. Isn't that all?

A. And I think Bridget Gallagher was there. I think she left soon after—no, no, wait a minute. This is in the spring——

Q. After you came from Europe in 1929?

A. Bridget Gallagher was there as waitress.

[fol. 625] Q. When did she leave?

A. Soon after I got back.

Q. She left when you got back from Europe in the spring?

A. I think so. I am not positive about this, Mr. Gray.

Q. But this was the place that you managed and controlled?

A. Yes, I know it is the place that I was managing and controlling, but we always had reserve servants that we would bring backwards and forwards with us and it really

didn't make so much difference whether they were there or not just so there was a cook and someone to keep the house clean and the beds made; and then I would bring in extra people.

Q. When you were there and stayed over night, you took your clothing with you, your necessary night things and toilet articles?

A. Not at all; I had them there.

Q. Clothes?

A. Yes.

Q. In Cinnaminson?

A. Yes.

Q. Always?

A. I always had clothes there.

Q. Since 1925?

A. I always had clothes there.

Q. House clothing or outside clothes, for wear outside?

A. I never kept any of my handsome things—any of my more formal clothes.

Q. By the way, you never gave any entertainment at Cinnaminson after 1925, did you?

A. I never gave any large entertainments. I have had [fol. 626] people for dinner. But Mr. Gray, you must remember that there were two ill women there from 1906 until——

Q. 1926?

A. I mean 1926 until January of 1929.

Q. Alright, after January, 1929, did you ever give any entertainments there?

A. At Cinnaminson?

Q. Yes.

A. No, sir. I never gave any entertainments. I have had people for dinner.

Q. You mean an individual friend who might be there for dinner?

A. I mean we would have several people for dinner. I never gave a large dinner because most of our friends lived over on the main line and it was very much more convenient for them to dine with us there than to take this trip to Cinnaminson and then all the way back again.

Q. What about your old friends in New Jersey that you made between 1911 and 1925?

A. They dined more constantly when I was over there.

Q. Are any of them here?
A. Yes, Mr. Armstrong.
Q. Is he the only one?
A. I couldn't say. The only one that I can see.
Q. Have you arranged for any of the others to be here?

Mr. Hannum: Of what importance is that? I object.

A. No, I have not.

The Court: Objection sustained.

[fol. 627] Mr. Gray: Grant me an exception.
The Court: Yes.

(Bill sealed for the Commonwealth.)

By Mr. Gray:

Q. In 1929 after you came from Bar Harbor, I have your reply that you had gone to Cinnaminson, your reply to Mr. Hannum, am I correct in that?

A. I went to Cinnaminson and then my daughter Charlotte had her coming out party on the 5th—on the first of October and I sailed to join my husband in Bad-Nauheim where my husband went from Bar Harbor. I sailed on the 5th of October. My husband left Bar Harbor and went back—I think he came—of course, he came to Cinnaminson to the factory and then he sailed for Bad-Nauheim to take the cure.

Mr. Gray: I ask that what the witness said: "Of course, he came back to Cinnaminson to the factory" be stricken from the record. I ask that what the witness said: "Of course, he came back to the factory to Cinnaminson, before he went to Bad-Nauheim," be stricken from the record. It is not responsive to any question whatever.

The Court: I refuse the motion. Exception.

(Bill sealed for the Commonwealth.)

By Mr. Gray:

Q. With you?
A. With me.
Q. By the way, did you go to New York to see him off to Europe?

[fol. 628] Mr. Hannum: I object to that. What difference does it make?

The Court: She can answer that question. Overrule the objection. Exception.

(Bill sealed for the Executors.)

A. I did.

By Mr. Gray:

Q. But you don't know what date he sailed?

A. He sailed on the Bremen. It is a very easy date to look up.

Q. You don't know.

A. I think it was the second sailing of the Bremen from America, and that is a very easy date.

Q. When did you and Dr. Dorrance come back from Europe, the approximate time of your arrival?

Mr. Hannum: What year.

Mr. Gray: We understand each other.

The Court: You are talking about 1929, aren't you?

Mr. Gray: Yes, when I change it from that I will mention a new date.

A. I sailed on the 5th of October on the Berengaria, which usually took six or seven days and I was three days in Paris with my husband and returned on the same ship at its next sailing from Europe to America.

Q. So you were back in a little over two weeks from the 5th of October?

A. I went over, and came back with him.

Q. I suppose your daughter Charlotte's coming out party [fol. 629] that you mentioned, on the first day of October, was at Woodcrest, Radnor?

A. Yes.

Q. Two of your daughters have been married in the last two years, have they not?

A. Yes.

Q. Miss Eleanor, the oldest, was married when?

A. She was married on the first of October in 1926.

Q. Where was she married?

A. Where did the ceremony take place?

Q. Yes.

A. At the Church of the Redeemer, Bryn Mawr.

Q. Were you connected in any way with the Episcopal Church?

A. Yes.

Q. Were you connected with that church?

A. Not at all. I had never been in it before.

Q. Was Dr. Dorrance connected with that church?

A. Not at all.

Q. The ceremony was performed by whom? The Rector of it?

A. The Rector of the church, Mr. George——

Q. You had, of course, a reception, did you, at that time?

A. Yes.

Q. Where was that reception?

A. At Woodcrest.

Q. Radnor?

A. Yes.

Q. Your second daughter was married, Miss Ethel, when?

A. She was married the 29th of this May.

Q. 1931?

[fol. 630] A. 1931.

Q. On account of the death of the father, of course, there was not such an elaborate affair as the other?

A. Just the two families.

Q. Where was she married?

A. In the library of her home.

Q. At Woodcrest?

A. At Woodcrest.

Q. Was your daughter, Eleanor, of age when she married?

A. No, sir; she was nineteen.

Q. Did you go with her to secure a marriage license?

A. I had to. I think they went by themselves—my son-in-law Nathaniel Hill and my daughter, and then they came back and got me because I had to——

Q. You had to sign?

A. I had to sign.

Q. You did sign something, didn't you?

A. I signed something——

Q. Given you to sign.

A. Yes.

Q. Where was it you signed this?

A. It was some place on the Conshohockin Road in Bryn Mawr, some place along there, Bryn Mawr.

Q. In other words, you secured the license there?

A. I didn't secure it. My son-in-law, Nathaniel Hill, secured it.

Q. Where did you give, when you signed that paper, yours and your daughter's residence?

Mr. Hannum: I object. It seems this was after Dr. Dorrance's death, May 29, 1931.

Mr. Gray: No, it wasn't.

[fol. 631] A. No, this was my older daughter, Eleanor.

The Court: You are speaking of the first marriage?

A. Yes.

Mr. Gray: Mrs. Dorrance and I thoroughly understand each other.

A. I don't remember that I gave any residence. I probably gave Radnor, as I was there at the time, and I had come from Radnor.

Q. You certainly didn't give Cinnaminson, did you?

A. I don't think that I was even asked my residence. I may have been.

Q. You are in the habit of giving Radnor as your address?

A. Yes—my address?

Q. Yes.

A. Yes.

Q. When your second daughter was married in 1931, did you have anything to do with the securing of the license?

A. None.

Q. None whatever. Was she of age?

A. Yes, she was twenty-one.

Q. Mrs. Dorrance, will you describe—I think I did ask you and you did describe the house at Woodcrest.

A. No, I never have.

Q. You never described it?

A. No, sir, it was my brother-in-law.

Q. Who?

[fol. 632] A. It was my brother-in-law, Dr. George Dorrance, who described it yesterday.

Q. Won't you give me a description of the house?

A. Well, it is a large stone residence with a very large center hall and two small rooms and a large room with a study, and on the left a dining room. Shall I go on to the servants' end?

Q. How large is the dining room?

A. Well, it isn't as long as our dining room at Riverton, Cinnaminson, but it is a very elaborate room, because we—it is the way it was when we bought it, you see.

Q. On the first floor there are two small rooms on one side of a large center hall?

A. Yes.

Q. And a very large living room?

A. Yes.

Q. And then the study?

A. Yes.

Q. And then the other side of the hall, is that the dining room?

A. Yes.

Q. And I suppose back of the dining room—I don't want you to go into detail—are the pantries and kitchen?

A. Yes.

Q. Is that approximately all on the first floor without giving the detail of the servants' part of the house?

A. Well, one or two lavatories.

Q. Then on the second floor. By the way, does the hall, that open hall—is the ceiling of that hall at the floor, at the second floor, or does the hall arise to the third floor?

A. It goes to the second floor. The rooms open on a bal- [fol. 633] cony on the second floor. The third floor is not connected with it, except——

Q. In other words, the hall is open to the third floor?

A. To the floor of the third floor.

Q. How many rooms have you on the second floor in that house?

A. Ten rooms.

Q. Ten bed rooms?

A. No, they are not all used as bedrooms.

Q. Some are dressing rooms?

A. And study for the children. A little study with desks in it; and then two little sitting rooms.

Q. How many bed rooms?

A. Seven.

Q. How many baths?

A. Five.

Q. On the third floor what is there?

A. There is a nursery and two smaller rooms on either side of it with baths, that one of the nurses sleeps in. One of the smaller rooms on this floor is not used at all. There is a linen room and five bed rooms, besides the nursery end, the part that I used for the nursery end.

Q. You say living room?

A. No, I said linen room.

Q. And five other bed rooms and baths up there that are not used?

A. Yes.

Q. How many other buildings have you on the grounds there?

A. There are—what was the stable, and we have two little ponies in there and the work horses; and what was the car-
[fol. 634] riage house during Mr. Paul's and Mrs. Munn's time is used as a garage.

Q. How large a garage is it; how many cars does it accommodate?

A. I think we have—it would accommodate five or six—five, I mean in rows in front. There was room for three or four in back and two or three in front, if you put them in front. It is very awkward, because it is a carriage house turned into a garage.

Q. How many other buildings on the ground?

A. There is a little courtyard and a small house that was connected that was for the men living on the place, workmen.

Q. Have you a house on the place in which your servants live?

A. No, sir. I haven't. The chauffeur lives in a house and the gardener lives in a house.

Q. Then there is a separate house for the chauffeur?

A. No, sir. They are all connected with the carriage house and the garage.

Q. Do your house servants live in that also or do they live in the house?

A. Peter Orliff, who is a married man, has one of the houses, but he also has a room in the house. He is the only one.

Q. Take your maids in the house, where do they sleep?

A. They sleep in the house.

Q. You mean there is one wing in the house that is for servants' quarters that you haven't described?

A. Yes. Over the kitchen.

Q. Over the kitchen is the servants' sleeping room?

A. Kitchen and dining room, and the cold room, and all [fol. 635] of those rooms have two stories, all the servants' rooms are over there.

Q. And the servants' rooms are over them?

A. Yes.

Q. How many servants' rooms are there in that servants' wing of the house?

A. Twelve small rooms, little rooms, with two baths.

Q. Now, are there any other buildings on the place besides those you have described?

A. There is a lodge at the gate, but it isn't in use.

Q. You mean at the present time or never has been?

A. It was at one time occupied by the butler who lived with us for about a year.

Q. I am going to show you a photograph which you may not have seen, that is marked Commonwealth Exhibit 3, and ask you whether or not that is an accurate picture of the house and part of the grounds?

A. It is. This is an outer building that isn't used. This is the squash court, we used as a junk place because no one in the family plays squash.

Q. Pointing to building in close proximity to the residence itself?

A. Yes.

Q. Are these outer buildings appearing in the upper right corner of the picture part of the buildings on your ground?

A. No, sir.

Q. Your property is next to the St. David's Golf Club, which is indicated as far as part of it is concerned, in the upper left corner of the picture, is that correct. Probably I should ask you another question first. Eagle Road is along the front of where the bottom of this picture is?

[fol. 636] A. Yes. There are the stables. You can see the little houses on either side——

The Court: What will this mean on the notes.

Mr. Gray: So far as I am concerned, it doesn't make any difference.

Q. The Gulph Road runs down what would be the right hand side of your picture and the entrance to the grounds is from the Gulph Road?

A. The Gulph Road runs back here.

Q. And it turns around and comes down there on the other side of your property. What is the name of that road?

A. King of Prussia.

Q. Do you know, Mrs. Dorrance, as to the length or depth of the house, the main house, itself?

A. I have no idea, Mr. Gray.

Q. Your house at Cinnaminson, you told me, is heated in the winter time, or rather you answered Mr. Hannum's question.

A. Always.

Q. It is hardly necessary to ask you if your house in Radnor is heated in winter time. Is your house in Cinnaminson heated by hot water or steam, or in what way?

A. It has a coal furnace.

Q. Is it hot air heat?

A. No, sir, it has radiators.

Q. Therefore, it is either steam or hot water, but you don't know which?

A. I think it is vapor, as a matter of fact.

Q. Where do you get your coal for the house at Cinnaminson?

[fol. 637] Mr. Hannum: What difference does it make.

A. It is ordered through the purchasing department of the Campbell Soup Company.

By Mr. Gray:

Q. So you had nothing to do with it?

A. I have nothing to do with that.

Q. Or whether Dr. Dorrance during his life time paid them for it, you don't know?

A. I know perfectly well that he did pay them.

Q. That was charged against him, as his brother, Arthur, said, and then he paid those bills?

A. Yes.

Q. Have you any knowledge as to the quantity of coal that has been used during any one or all of the winters in the Cinnaminson house since 1925?

Mr. Hannum: I object.

The Court: The objection overruled. Exception.

(Bill sealed for the Executors.)

A. I haven't the least idea.

By Mr. Gray:

Q. You haven't the least idea. Where did you get your coal that is used for the heating of the house at Woodcrest, at Radnor, Pennsylvania?

A. We used oil.

Q. Where did you get your oil?

A. I don't know. That is also ordered through the purchasing department of the Joseph Campbell Company.

Q. Of the Campbell Soup Company.

[fol. 638] A. Of the Campbell Soup Company.

Q. And I suppose your answer would have to be, with respect to that, you haven't any idea with respect to the cost of it?

A. I haven't the least idea.

Q. I think you have already told me that the telephone bills for Cinnaminson are paid through the bills of the corporation, the Campbell Soup Company, in Camden, that is correct?

By Mr. Hannum: I object to that. I don't think Mrs. Dorrance said that.

The Court: I think she answered once; but go ahead.

A. I don't know, but I am sure it is charged against us.

By Mr. Gray:

Q. But you didn't pay them?

A. I signed a great many checks that Miss Brinton made out for me and she will show you those—that is that and this is the other and I signed them.

Q. Do you pay the telephone bills for the house at Cinnaminson?

A. I probably do, the same way that I do at Woodcrest. Shall I ask Miss Brinton. She is here.

Q. No, possibly your counsel will see fit to put her on. Your answer is that you don't know whether you paid the

telephone bills up there or whether they are paid by the company?

A. I am sure that I paid for them, but don't know whether I make the check out to the Campbell Company or whether I paid the check to——

[fol. 639] Q. Do you know what your telephone bills have amounted to there since 1925, either giving them to me by the month or the year?

A. I haven't the least idea.

Q. Now, you have a telephone in the house at Woodcrest, at Radnor?

A. I have, two: one for the servants and one for our end of the house.

Q. Two separately numbered telephones?

A. Yes.

Q. How about the number of extensions?

A. A great many extensions: the gardener; the greenhouse, and the chauffeur's house.

Q. Do you know how many?

A. I just said the gardener's house, the garage, and the chauffeur's house.

Q. Do you have any intercommunicating system there?

A. Yes.

Q. Do you personally pay the bills for that?

A. I paid—by check.

Q. You signed the check?

A. Yes.

Q. Directly to the telephone company?

A. I think so.

Q. You don't know?

A. I am not positive.

Q. Do you know what your bills amount to there?

A. I haven't any idea. I imagine——

Q. Do you know anything about how the bills for telephone service furnished to you at Woodcrest, Radnor, Pennsylvania, compared with the bills for telephone service furnished to you at Cinnaminson, New Jersey?

[fol. 640] A. I think that the ones at Cinnaminson would be about one hundred less.

Q. What you mean is 1/100th——

A. 1/100th of what they are at Woodcrest.

Q. In other words, that for every dollar of your telephone bills for Cinnaminson during the past five years or five

years from 1925 to 1930, your bills at Radnor would amount to $100?

A. I hope they don't amount to that much. You mean by the month.

Q. Take it either by the month or the year, your bills at Radnor are one hundred times as much as your bills at Cinnaminson, that is what you mean.

The Court: That is what she said.

A. Mr. Gray, with sixteen servants and other people living around——

Q. You don't have to argue it, I want the fact, to know the fact.

The Court: Explain it.

A. I was just about to say that with sixteen servants and a number of children and their friends and people living around in different houses, they are enormous. There is no way of checking up on them.

By Mr. Gray:

Q. That is your explanation and your answer?

A. Yes.

Q. Now, Mrs. Dorrance, did you pay the gas and electric bills for the house at Cinnaminson since 1925?

A. Either Dr. Dorrance's money or since his death from my income that they are paid through. Dr. Dorrance paid [fol.641] all of the bills until his death. They all went through his office, even my little personal bills.

Q. So that the gas and electric bills for Cinnaminson prior to his death in September, 1930, and since 1925, were paid by him either directly or through the Campbell Soup Company, that is correct?

A. I think so.

Q. Now, since 1925, do you know who paid the gas and electric bills in connection with Woodcrest at Radnor?

A. Why, it was through his secretary who made out the checks and Dr. Dorrance signed them.

Q. Dr. Dorrance paid them personally?

A. I imagine so.

Q. Have you any knowledge as to the amount of the gas and electric light bills, either separately or give them to-

gether in combination, that were incurred in connection with the property at Cinnaminson between 1925 and 1930?

A. I have no idea, Mr. Gray.

Q. Have you any knowledge of the amount of the gas or electric bills that were incurred in connection with the property at Woodcrest, at Radnor, between 1925 and 1930?

A. I only know that they were enormous because Dr. Dorrance used to say he was going to take all the bulbs out of the servants' quarters or the different rooms in the house because the electric bills were so heavy, and he would usually be very much annoyed about the size of the gas bills. And I know they were very large.

Q. The gas and electric bills were rendered by the same company and on the same bills at Radnor are they not?

[fol. 642] A. I don't know.

Q. I cannot place my knowledge on the record, so I have got to ask you questions. They ran from $250 a month on the average, at Woodcrest, Radnor?

A. I told you that I haven't the least idea. I haven't the slightest idea.

Q. Isn't it a fact, that the greatest electric light and gas bill that you ever had at Cinnaminson since 1925 is seven dollars?

A. I really don't know. I have no idea.

Q. Well, whether you have any knowledge of your gas and electric bills you have knowledge of the purchases that were made for food consumption in the house, that is true?

A. What is that?

Q. Whether you have any knowledge of the gas and electric light bills or not, you have personal knowledge of the bills that were incurred for food purchased for consumption in the house at Radnor, that is true? You have a knowledge of that?

A. Yes.

Q. You did your own marketing?

A. I did until this past year.

Q. You dealt at one time with Mitchell Fletcher?

A. I have never dealt with Mitchell Fletcher except for a very few little fancy groceries.

Q. You dealt with Mitchell Fletcher for a consecutive period of five months when your family bill for groceries averaged over four hundred dollars a month for Radnor?

A. I did not.

Mr. Hannum: I object.

The Court: She has answered.

[fol. 643] Mr. Hannum: What is the importance of this?

The Court: I don't know. I imagine it is important or Mr. Gray wouldn't ask the question.

Mr. Hannum: I object to it.

The Court: Objection overruled. Exception.

(Bill sealed for the Executors.)

A. Mr. Gray, I want to tell you something, a butler that we had who did our marketing—we tried him in doing our marketing for a little while—had a rooted objection to the smaller stores and during his regine of marketing, he may have incurred some bills at Mitchell Fletcher's. I know that he used to like to go there, but they were never—that purchasing was never done by me.

By Mr. Gray:

Q. What year was that you had that Butler?

A. I imagine it was in the winter of 1926-1927.

Q. When did you go to Europe in 1927?

A. When did I go in 1927?

Q. Yes.

A. I went in the spring.

Q. Do you know what month?

A. It was either April or May, we always went in the spring.

Q. Now I ask you whether or not your bill for groceries from Mitchell Fletcher Company, for groceries delivered to your house at Woodcrest, Radnor, Pennsylvania, in the month of March, 1927, was not $469.29?

A. It might have been.

[fol. 644] Q. I ask you whether or not your bill for groceries delivered by Mitchell Fletcher Company to your house at Woodcrest, Radnor, in April, 1927, was not $528.30?

A. I have no idea.

Q. It might have been?

A. It might have been.

Q. I ask you whether your bill for groceries delivered by Mitchell Fletcher Company to your house at Woodcrest, Radnor, in May 1927, was not $405?

A. In May? It might have been. I know that is one reason that the Butler and I——

The Court: Never mind.

By Mr. Gray:

Q. I ask you whether or not your bill for groceries delivered by Mitchell Fletcher Company in June, 1927, to Woodcrest, Radnor, Pennsylvania, didn't amount to $427.38?

A. I don't know.

Q. It might have been?

A. It might have been.

Q. I ask you whether or not your bill for groceries delivered by Mitchell Fletcher Company to Woodcrest, Radnor, in July, 1927, didn't amount to $332.62?

A. It might have been.

Q. Now, aside from those groceries that were purchased at Mitchell Fletcher Company, ever since 1925, outside of this particular period of time that you say the butler purchased these goods, you have done your own marketing?

A. I have done it with the exception of the time that this man, Bibbie, did the purchasing and at the present time when butler Oloff does it.

[fol. 645] Q. Can you tell me anything about the average of your bill for food that went into the house at Woodcrest, Radnor, Pennsylvania, during the period of time since 1925, under your purchasing?

A. Do I have to answer that?

The Court: If you can.

By Mr. Gray:

Q. On the average during those five years, if you can?

A. I would say that would be between four and five hundred dollars a month.

Q. On the average during those five years?

A. I should say so. It is feeding something like twenty some people a day—twenty-five people, practically, with guests.

Q. When you were at Bar Harbor, did you have a bank account?

Mr. Hannum: I object to that. What is the importance of this?

The Court: Objection sustained. I don't see that it makes any difference.

Mr. Gray: The purpose of the question, so that your Honor may understand, the purpose of the question is: if she states that she did have a bank account, to ask her as to whether or not when she left her signature there she didn't give her address as Radnor, Pennsylvania.

The Court: You can ask her if she left her signature there.

[fol. 646] By Mr. Gray:

Q. Did you have a bank account and left your signature at Bar Harbor?

A. I left my signature but I don't think I left my address.

Q. Let me assist you on that——

Mr. Hannum: Let me see that.

Mr. Gray: It is only a letter to me.

Mr. Hannum: Then I object. I object to his cross-examining her from a letter to you. Whatever the paper is from which he is cross-examining her, it is not evidence. I object to it.

Mr. Gray: I have no way of putting my notes in evidence.

The Court: I don't see that it makes much difference. I will overrule your objection, Mr. Hannum, and give you an exception.

By Mr. Gray:

Q. Was your local address Mizzentop, Bar Harbor, Maine?

A. For one year.

Q. I am talking about the year, 1928, that is correct. According to you the first year you went to Bar Harbor after you went to Radnor—1926 and 1927 in Jamestown. 1928 in Bar Harbor?

A. Yes.

Q. Was your local address then in Mizzentop, Bar Harbor, Maine?

A. Yes.

Q. Did you not on a card in your handwriting set forth [fol. 647] there, Mrs. Dorrance, your local address, Mizzentop, Bar Harbor, Maine, and then the permanent address, Radnor, Pennsylvania?

Mr. Hannum: I object to that.

The Court: What did you say?

A. I was going to say I might have.

Mr. Hannum: I object to that and ask that it be stricken out.

The Court: Objection overruled. Exception.

(Bill sealed for the Executors.)

By Mr. Gray:

Q. You had an account at Strawbridge and Clothiers in the City of Philadelphia, did you not, a credit account, at Strawbridge and Clothiers in the City of Philadelphia?

The Court: You mean she had individually?

Mr. Gray: Yes.

The Court: How does that bear on the question of this man's residence?

Mr. Gray: Because he wrote a letter to Strawbridge and Clothier.

The Court: Dorrance himself?

Mr. Gray: Authorizing the opening of an account and giving residence at Radnor, Pennsylvania.

The Court: That is alright.

[fol. 648] By Mr. Gray:

Q. You had an account at Strawbridge and Clothier, did you not?

A. We had an account there, and then Dr. Dorrance became annoyed with them about something and he withdrew the account. But I wanted the account opened and he opened it in my name. But he said he would not have anything to do with it.

Q. In other words, the account was originally in his name?

A. I don't know whose name it was in.

Q. But it wasn't in your name?

A. I don't know.

Q. At any rate, as to whose name it was in, the doctor became annoyed?

A. Yes.

Q. And after the doctor became annoyed it was opened in your name?

A. No. It was suspended for a number of years.

Q. It was then suspended and then opened in your name?

A. Yes. When I said I would like to have it there, and he arranged it.

Q. Was there any account at Strawbridge and Clothier, for your information, which apparently was opened in your name in April, 1926—were all of the goods purchased on that account thereafter delivered to Woodcrest, Radnor, Pennsylvania?

A. I think so.

Q. And when that account was opened, do you know whether Dr. Dorrance wrote a letter with reference to the opening of the account?

A. No, sir; I don't.

[fol. 694] Mr. Gray: I think we only have three exhibits. I ask that the stenographer mark this paper as Commonwealth's Exhibit 4.

Mr. Hannum: Will you please show that to the Court before showing it to Mrs. Dorrance.

The Court: Well, that is alright. Is this objected to.

Mr. Gray: I am not offering it yet.

The Court: You can ask Mrs. Dorrance about it.

By Mr. Gray:

Q. I ask you whether or not the signature contained upon this paper that is marked Commonwealth's Exhibit 4, is the signature of Mr. John T. Dorrance, your deceased husband?

A. That is quite correct.

The Court: Is this to be offered in evidence now?

Mr. Gray: I cannot offer it yet. It is not my case yet.

The Court: Well, let it rest until you get to your side.

By Mr. Gray:

Q. You had an account with Bonwit Teller?

A. Yes.

Q. Do you know when that account was opened?

A. I have no idea.

Q. Was it opened by you?

A. I suppose, so; yes, of course.

Q. Is it not a fact that all of the purchases that were [fol. 650] made at Bonwit Teller's from the time it was opened down—I was going to say to the present time—but I don't care about the present time—down to the date of Dr. Dorrance's death, were delivered to Radnor, at Woodcrest?

A. When was in opened?

Q. It was opened in January, 1928, so far as I can see from these papers?

A. Mr. Gray, I had almost all of the bills sent to Woodcrest, Radnor, because I was there most of the winter. That is when I did most of my purchasing and it would be very ridiculous for me to say "Charge to Cinnaminson, New Jersey, and send to Radnor."

Q. I agree with you?

A. When I was there during the winter months and when I did my purchasing.

Q. I am asking you whether or not all of the goods which were purchased at Bonwit Teller's during the period of time when this account was opened in January, 1928, were not delivered to Woodcrest, Radnor, Pennsylvania?

A. I couldn't say.

Q. Did you ever have any of them delivered to Cinnaminson, New Jersey?

A. I don't know.

Q. You don't know, Mrs. Dorrance, whether they were at any time delivered to Cinnaminson, New Jersey?

A. Packages, of course, I had.

Q. From Bonwit Teller's?

A. I couldn't say. But I have had numerous packages delivered there at Cinnaminson.

Q. Tell me from what store, and what time and what was in the packages aside from groceries locally delivered, were [fol. 651] delivered to Cinnaminson, New Jersey, during the period of time from 1925 to 1930?

A. Wanamaker's store.

Q. Delivered to Cinnaminson?

A. Yes.

Q. When?

A. I couldn't tell you the dates.

Q. What kind of articles?

A. Kitchen utensils; tea-towels, and different articles of clothing were delivered there.

Q. Clothing?

A. Yes. I think so.

Q. Tell me, did you ever have delivered from Wanamaker's store any clothing of any kind to Cinnaminson?

A. I don't know.

Q. Can you name a single thing, and tell me when it was, that Wanamaker ever delivered to Cinnaminson?

A. What do you mean by clothing?

Q. Anything, from 1925 to 1930?

A. Well, I know I bought two vegetables dishes not very long ago.

Q. That is since Dr. Dorrance's death?

A. But I can't remember. How could I remember little fiddling purchases.

Q. It is you that makes the statement, therefore, I am forced to ask you as to the details?

A. I don't know, Mr. Gray.

Q. In other words, you can't give me a single thing that was purchased at Wanamaker's and delivered to Cinnaminson at anytime between 1925 and 1930, can you?

A. I can't think, Mr. Gray.

[fol. 652] Q. You had an account at Bailey, Banks and Biddle?

A. Yes.

Q. And that account was in your name?

A. I imagine so, I don't know.

Q. Aside from the things which you purchased there and had delivered to someone else because they were presents of some kind, all the things which you purchased for yourself or for any member of the family during the period of time between 1925 and 1930 were delivered to Woodcrest, Radnor, Pennsylvania, were they not?

Mr. Hannum: I object. This is an account, as I understand it, of Mrs. Dorrance.

Mr. Gray: Correct.

Mr. Hannum: What difference does that make?

Mr. Gray: You offered the agreement as to residence in evidence.

The Court: Objection overruled. Exception.

By Mr. Gray:

Q. Do you want the question read?

A. I bought very few things for my children or myself at Bailey, Banks and Biddle, except at Christmas time. As the house is very large and we used to spend Christmas there since Dr. Dorrance purchased it, naturally, the things were sent to Radnor.

Q. The fact is, they were sent there. That is the point I am making.

A. Yes. They were sent there.

Q. Did you have the Christmas card at one time which [fol. 653] you sent out which had on it the house at Radnor, Pennsylvania

A. No, never.

Q. Mrs. Dorrance, you stated that in September of 1930 you came down from Bar Harbor with Dr. Dorrance, is that correct?

A. I did.

Q. On the same train, at the same time?

A. At the same time, in the same train. Same time in the same train.

Q. And he went to Cinnaminson in one car and you went to Cinnaminson in another?

A. I went with one car and he went with Mr. Oliver Willetts who met us at the station.

Q. Did Mr. Willetts drive the car?

A. He drove the car.

Q. Was there anybody else besides Mr. Willetts and Mr. Dorrance in the car that he was in?

A. I don't know whether Peter Oloff was with him or not in the same car.

Q. Did Oloff come down from Bar Harbor with you?

A. He did.

Q. That was on the 14th of September?

A. No, sir. I think it was the 15th. We left the 14th.

Q. That was the 15th. I think you said that after he got to Cinnaminson that Dr. Dorrance, your brother-in-law and the other doctor was sent for, is that right?

A. No, sir. I didn't say that.

Q. Tell me what you did say.

A. I said that my brother-in-law came out and had dinner with us that night.

[fol. 654] Q. By your brother-in-law, you mean Dr. George Dorrance?

A. Yes, Dr. George Dorrance.

Q. Then you said that the next morning Dr. John T. Dorrance had an attack of some kind?

A. He was being shaved and he had an embolism, if you know what that is.

Q. You sent then for what doctor?

A. We telephoned to his brother and then we telephoned to Dr. Ulmer, of Moorestown.

Q. Did they both come there?

A. Yes, they did.

Q. Now that would have been the morning of the 16th of September, 1930?

A. Mr. Gray, we left on Sunday and arrived in Philadelphia on Monday. It was the next morning—it was the following morning that Dr. Dorrance——

Q. It was Tuesday morning?

A. It was Tuesday morning. I think I am correct in saying it was the 16th, but I am not positive.

Q. What date of the week did Dr. Dorrance die?

A. Sunday morning.

Q. And the date that he died was the 21st?

A. The 21st.

Q. Therefore we fix the preceding Sunday as the 14th. Monday is the 15th and Tuesday is the 16th.

A. Yes, I am correct.

Q. Did you leave on Sunday from Bar Harbor?

A. Yes, we left on Sunday.

Q. You got here on Monday.

A. Yes.

Q. The morning of Tuesday, the 16th, Dr. Dorrance was attacked as you have indicated?

A. He was.

[fol. 655] Q. Did you remain at the house all the night of Monday, September 15th?

A. I did.

Q. When did you next leave the house at Cinnaminson after the night of Monday, September 15, 1930.

A. When I attended my husband's funeral.

Q. Not until then?

A. Not until then.

Q. You were there all that week.

A. Absolutely.

Q. Do you mean that you remained there all of that week without going back to Radnor?

A. I never was in Radnor that week.

Q. Did Dr. John T. Dorrance at any time during that week leave to go to his place of business?

A. He did not.

Q. At any time?

A. He was in bed, unconscious.

Q. Since Tuesday the 16th?

A. Yes.

Q. Until his death?

A. Semi-conscious.

Q. Until his death?

A. Until his death, yes.

Q. So that Dr. John T. Dorrance was at no time after his return from Bar Harbor with you on the 15th, that is the arrival here on the 15th of September, 1930, at his place of business in Camden, New Jersey?

A. He was not.

Q. How much money was expended by you and Dr. Dorrance for the purpose of furnishing Woodcrest when you moved into it in 1925?

A. I have no idea, Mr. Gray.

Q. Can you give us any approximation?

[fol. 656] A. I haven't the slightest idea.

Q. You did a great deal of the purchasing?

A. I did a great deal of the selecting. My husband paid the bills.

Q. But you have no idea as to amounts?

A. Not the slightest.

Q. How many of the servants that were with you when you first came to Woodcrest in 1925 are still with you?

Mr. Hannum: I object to that. Haven't we been all over this. What is the importance of this?

The Court: Objection overruled. Exception.

(Bill sealed for the Executors.)

A. The house servants do you mean?

By Mr. Gray:

Q. Yes.

A. Two maids, Catherine Piza—two maids and the house man.

Q. That are still with you?
A. Yes.
Q. Are they in Court here?
A. I don't see them. Not to my knowledge.
Q. Have you arranged to have them here?

Mr. Hannum: I object. What difference does it make?
The Court: That objection is sustained. Exception.

(Bill sealed for the Commonwealth.)

[fol. 657] By Mr. Gray:
Q. One of your children went to school near Woodcrest, or more than one of them, that is so?
A. Two of them.
Q. One of them goes to the Montgomery school?
A. My boy.
Q. That is John T. Dorrance, Jr.?
A. Yes.
Q. You only have one boy?
A. Yes.
Q. When did he enter the Montgomery school?
A. He entered the autumn of 1925.
Q. Did you arrange his entrance or did Dr. Dorrance?
A. I couldn't say. I think it was I.
Q. Did you sign an enrollment card for him?
A. I don't remember.
Q. Did you give an address for the boy and for yourself?
A. I probably gave Radnor as he was going to be out there that winter. But I am not sure.
Q. Do you belong to the Art Alliance?
A. I have been elected to it but I have never been inside of the door.
Q. As a matter of fact, you had been a member of the Art Alliance prior to 1925?
A. I don't remember. I have never been inside of the doors, as I mentioned. I have had no active connection with it.
Q. Can you tell me how long you have been a member, whether you haven't been a member prior to 1925?
A. I haven't any idea.
Q. You have no idea how many years?
[fol. 658] A. No, sir.
Q. I ask you whether it isn't a fact that you were a member of the Art Alliance since prior to 1925 and having

given your address at Cinnaminson, New Jersey, whether after 1925, you didn't have your address changed to Radnor, Pennsylvania?

A. I did not.

Q. Did you enter any of your children in the School of Industrial Art in Philadelphia?

A. I think our second daughter took sewing lessons some place and she might have entered herself. But it was when I was abroad one year. I am not sure.

Q. Isn't it a fact that you yourself gave the address when your daughter went to that school, to the school authorities, as Radnor, Pennsylvania?

A. To what school, Mr. Gray?

Q. To the School of Industrial Art at Broad and Pine Streets, Philadelphia?

A. I did not.

Q. Are you connected with the Emergency Aid, Philadelphia?

A. I worked during the war for the tobacco committee.

Q. Is it not a fact prior to 1925 you gave your address at the Emergency Aid as Riverton, New Jersey, and that later on you had that address changed to read at Radnor, Pennsylvania?

A. I know I must have given either Riverton or Cinnaminson, because I had no other home at that time. But I don't remember having changed it. It may be—I might have sent checks from Radnor to it and they may have [fol. 659] changed it. But I don't think I ever wrote and had my address changed. I might have though.

Q. You belong to the Acorn Club of Philadelphia?

A. I do.

Q. When did you join it?

A. I was put up for membership a year ago last spring, I think.

Q. That would be spring of 1930?

A. No, 1929, I must have been put up.

Q. Two years ago last spring?

A. Yes.

Q. This is the fall of 1931?

A. Yes. And I was elected a member last autumn.

Q. What address did you give them at the Acorn Club when you signed your application for membership?

A. I didn't give them any address. The people that proposed me put my name up—must have given my address.

Q. Have you given your address to the Acorn Club or any of its officers?

A. I never have. I paid my dues when I was elected.

Q. I am not questioning that. But do you know whether you gave to them your address as Radnor?

A. I never did.

Q. Do you know the name—you secured the license for the marriage of your daughter, Eleanor, from a Justice of the Peace, in Bryn Mawr, did you not?

A. My son-in-law did.

Q. You had to go there?

A. I signed a paper saying that her father and I knew that she was being married.

[fol. 660] The Court: That is you gave your consent to her marriage?

A. I gave my consent to her marriage.

By Mr. Gray:

Q. Can you remember the name of the Justice of the Peace—was it William H. Buckman?

A. I am not sure.

Q. You carry a bank account locally in the neighborhood of your home at Wayne or Radnor?

A. I keep a little money there, for my household bills.

Q. In Wayne?

A. Yes.

Q. What address did you give them?

A. Radnor.

Q. Your name, and the name of the other members of the family appears in the social directory, does it not?

Mr. Hannum: Social what?

Mr. Gray: Social Register.

A. They do.

By Mr. Gray

Q. And the information which is contained in the entries in the social register is obtained or was obtained in this instance from either you or Mr. Dorrance, isn't that so?

A. Mr. Gray when we went there—when we first moved to Woodcrest, my oldest daughter was making her debut and we wanted her address—it is just an address catalogue——

[fol. 661] Q. You mean the social register is——

A. My husband and I wanted an address that her mail would reach her during the social season. Dr. Dorrance wanted to have both our two places listed. So I don't remember how I have given it in. I am sure I gave our winter address that winter of 1925 as Radnor, because I wanted my child to get her mail promptly.

Q. You have seen the social register for that year?

A. Yes.

Q. I ask you whether or not the sole entry with regard to your address in the social register as appears for the year 1926 contains your husband's name and your own, and then Miss Eleanor's, Miss Ethel's, Charlotte K., and presumably your mother's, your mother's, Mrs. Lewis N. Mallin Ckrodt, whether the address given in the social register for that year was not Woodcrest, Radnor, Pennsylvania?

Mr. Hannum: I object, unless it is shown Mr. Dorrance gave it, her husband.

The Court Objection overuled. Exception.

A. I don't remember, but I probably did give it because it was for the same reason that I gave it the year before. There is a summer and a winter social register, and I think for those two years we listed in the summer social register at Riverton or Cinnaminson and in the winter, at Radnor.

Q. Isn't is a fact, Mrs. Dorrance, that the only residential listing which you or your husband or any member of your family had in the social register for the years 1926, 1927 and 1928 was Woodcrest, Radnor, Pennsylvania?

[fol. 662] A. I am not sure about the last year. I think for the first two years that is so.

Q. Isn't it a fact that in the year 1929, for the first time since 1925, you had added to the entry in the social register, "Phone No. 1, River, Cinnaminson"?

A. "Phone No. 1, Riverton".

Q. "River" is the abbreviation as appears in the Social Register.

A. I think Dr. Dorrance wanted that. The other years he asked them to list the two.

Q. Were you with him when he did that, Mrs. Dorrance?

A. He told me that he did.

Mr. Gray: Then I ask that that statement of the witness, not being responsive to my question, to the effect that Dr. Dorrance asked them to do certain things at a time when she was not there, and he having told her of that and that was her only information, be stricken from the record.

The Court: I refuse to strike it out.

(Bill sealed for the Commonwealth.)

A. Dr. Dorrance——

The Court: Never mind unless he asks you.

By Mr. Gray:

Q. I ask you whether or not it isn't a fact that the social register shows that in 1925 you were listed at Pomona Farms, Cinnaminson, New Jersey, and that it was not until 1929 that Cinnaminson was mentioned and in the years 1929 and 1930 it was only mentioned as an additional ad- [fol. 663] dress following your main address at Woodcrest, Radnor, Pennsylvania.

A. The reason it was listed this way in the later books——

Q. Answer the question first——

A. Will you put the question——

Q. Please answer, and then you can make any explanation you want.

A. It was.

Mr. Hannum: Now you make any explanation you please.

A. Both addresses were always given, but they wouldn't put them in until Dr. Dorrance paid twice for the books. Do you understand what I mean—by giving two subscriptions.

The Court: They were willing to list her in two places. In other words, the more books you bought, the more you got listed in the Social Register.

A. The more times.

By Mr. Gray:

Q. Then according to your statement, Dr. Dorrance, having sent to the Social Register both addresses, they became Woodcrest, Radnor, Pennsylvania, for publication in 1927, and 1928—1926, 1927 and 1928; is that it?

A. Dr. Dorrance put his preference for the winter months as our residence at Radnor for the reason I gave that he wanted his children to get what invitations they received promptly instead of having them either forwarded, or having to go over there, or having them wait for us until we happened to be at Cinnaminson over night, or stay there.

[fol. 664] Q. Now, it is a fact, is it not, that in the first place, your residence given in 1925 to the Social Register was Cinnaminson, New Jersey, that is right?

A. Yes.

Q. And it is a fact that the residence and only residence given in the social register for 1926, 1927 and 1928 was Woodcrest, Radnor, Pennsylvania; that is a fact.

The Court: Address you mean.

A. It was what they published.

Mr. Gray: I said residence.

A. Your name and just the address.

Q. Residence.

A. It just said address.

Q. I didn't say address.

A. It just gave the name with your telephone number and address for the winter months and the summer months.

Q. Then let me put it this way: instead of using the word residence, the only address or addresses that was given in the Social Register for the years 1926, 1927 and 1928 was Woodcrest, Radnor, Pennsylvania, that is correct?

A. I believe so. I don't remember.

Q. Mrs. Dorrance, when did you first know about the fact that your husband's estate had had a tax assessment made against it in Delaware County by the State of Pennsylvania and that an appraisement of the estate had been filed?

Mr. Hannum: I object to that. What difference does it make?

[fol. 665] The Court: I sustain the objection.

Mr. Gray: I will state my reason for it.

The Court: What bearing has it?

Mr. Gray: I want to show that the conduct of this good lady and her family with regard to the matter of residence as between Cinnaminson and Woodcrest, Radnor, Pennsylvania, had a decided change after this litigation started. In other words, I am going to show that she went back to Cinnaminson to try to show that Cinnaminson was her home, after this litigation started.

The Court: What difference does it make so far as he is concerned.

Mr. Gray: That is what I am trying to show, because of the fact that it will show that he actually came, as we shall contend, to Woodcrest, Pennsylvania to make this his home; it is where he lived. But for the purpose, which it isn't necessary for me to go into now, but which I think I have made clear in my cross-examination of certain witnesses, he desired to keep his legal home, if he could do so, in the State of New Jersey; that he had no actual home in the State of New Jersey; and that when this lady came into the hands of counsel, who may properly advise—understand and advise what did constitute a legal home, whatever efforts could be made for the purpose of strengthening the thought that Cinnaminson was the legal home of John T. Dorrance during his life time were put into effect.

The Court: Is that all you have to say.

Mr. Gray: Yes.

[fol. 666] The Court: Objection is sustained.

(Bill sealed for the Commonwealth.)

Mr. Gray: Your Honor's ruling will apply to any other questions along the same line.

The Court: That only applies to one question, of course. If you have any others, go ahead.

By Mr. Gray:

Q. Since your husband's death, you have taken back some of your servants to Cinnaminson from Radnor?

Mr. Hannum: That is objected to.

The Court: Objection sustained.

(Bill sealed for the Commonwealth.)

Mr. Gray: I am in some doubt in the face of your Honor's ruling. Does your Honor intend to rule that I am to ask no questions concerning things that occurred since her husband's death.

The Court: Anything that she has done?

Mr. Gray: Anything that she may have done in connection with her household since her husband's death.

The Court: If it is her, I will sustain the objection.

(Bill sealed for the Commonwealth.)

Mr. Gray: In that event, your Honor will give me an exception to your ruling indicating that I am to ask no further questions along that line.

(Bill sealed for the Commonwealth.)

[fols. 667-669] Mr. Hannum: We will withdraw Mrs. Dorrance for the moment.

The Court: Are you through with Mrs. Dorrance?

Mr. Gray: I state right now, I have no objection to counsel calling back any witness.

The Court: Mrs. Dorrance you may take your seat.

[fol. 670] EXHIBIT 1-b

TESTIMONY OF WILLIAM LIPPINCOTT—Pages 614-a to 633-a, inc.

WILLIAM D. LIPPINCOTT, recalled.

Redirect examination.

By Mr. von Moschzisker:

Q. You have already been sworn?

A. Yes.

Q. And you have qualified as a lawyer in the State of New Jersey. Now, Judge, have you with you Chapter 168 of the Laws of New Jersey of 1927, page 325?

A. I have, sir.

Q. What is that Act?

A. That is an Act concerning the domicile of a married woman, approved March 28, 1927, of the Legislature of the State of New Jersey.

Mr. von. Moschzisker: I think that has already been marked, Exhibits D and E of the Executors.

The Witness: No, I think not.

Mr. von Moschzisker: No, I am mistaken about that, strike out that. That is something else we marked as exhibits.

By Mr. von Moschzisker:

Q. Now, Judge, I hand you here certain photostatic copies. What are they?

(The witness examined the papers.)

The Witness: That is a photostatic copy of page 325 of the laws of 1927.

By Mr. von Moschzisker:

[fol. 671] Q. Well, have you the photostatic copy of this one I just called your attention to?

A. At the bottom of that page is a copy of chapter 168 of the Laws of 1927, being an Act concerning the domicile of a married woman, approved March 28, 1927.

Q. Of the Laws of New Jersey?

A. Laws of New Jersey.

Mr. von Moschzisker: Your Honor will recall the testimony given here before, that at the time that agreement was made this Act was in contemplation, and the Act was enacted immediately thereafter.

Will you mark that as the proper exhibit, whatever it may be?

(Photostatic copy of Married Woman's Act of 1927 was marked Exec. Ex. 2, 11-5-31.)

Mr. von Moschzisker: If Your Honor please, I offer that.

Mr. Gray: The Act you have just read?

Mr. von Moschzisker: Yes.

Mr. Gray: I am objecting to it as totally immaterial and irrelevant, sir.

The Court: Objection overruled.

Mr. Gray: Exception. I say to counsel I have no objection because it is using a photostatic copy for the record, rather than offering the whole——

The Court: Oh, no; objected to because the evidence is irrelevant.

Mr. Gray: That is all; only on account of the materiality.

[fol. 672] By Mr. von Moschzisker:

Q. Now, Judge, I hand you another photostatic copy of one of the laws of New Jersey. What is that?

(The witness examined the document.)

The Witness: That is a copy of pages 847 and 848 of the Laws of New Jersey of 1918, being the first two pages of chapter 236 of the Laws of New Jersey for the year 1918.

By Mr. von Moschzisker:

Q. Now, the section——

A. Being an Act for the assessment and collection of taxes, revision of 1918.

Q. And section 201 covers what?

A. Section 201 covers the poll tax provided for under chapter 236 of the Laws of New Jersey of 1918.

Q. Now, you testified once before there have been some amendments to that Act. Have you looked it up to find whether any of those amendments affect the poll tax?

A. There are no amendments to section 201 of that Act referring to poll tax.

Q. And these two photostatic pages you have here have that section 201 on them?

A. They do.

Q. You have the book containing the entire law there before you?

A. Yes, sir; chapter 236 extends from page 847 of the Laws of 1918 to page 882, inclusive.

Mr. von Moschzisker: If Your Honor please, the only relevant part here to our inquiry at present is this section [fol. 673] 201, which I will show to Your Honor, and then I offer that.

Mr. Gray: You are only offering 201?

Mr. von Moschzisker: Well, I will have to offer the Act, and call attention to 201 on the record, that part of it, unless you want the whole Act spread on the record.

Recross examination.

By Mr. Gray:

Q. Let me ask, Judge Lippincott, whether or not section 201 is affected by any of the later provisions in other sections of this Act.

A. No, sir.

Q. And whether section 202 of this Act is not the, or was not then, at least, the provision in force with regard to the taxation of real and personal property held by any residents of the State of New Jersey at that time?

A. Yes, sir.

Q. In other words, it simply contained a provision that, "All property, real and personal, within the jurisdiction of this State, not expressly exempted by this act or excluded from its operation, shall be subject to taxation annually under this act at its true value, and shall be valued by the assessors of the respective taxing districts." That provision was continued in section 202, was it?

A. Yes, sir.

Q. And, as a matter of fact, under the Act all real estate and all personal property except United States Government bonds and securities, State bonds and securities, and [fol. 674] possibly property held for charitable and religious purposes was subject to tax under that Act?

A. They were subject to tax under that Act excepting as exempted by section 203.

Q. Yes, well, I have in a general way quoted the exemptions in section 203, haven't I?

A. Not——

Q. Not all of them?

A. Not all of them, no.

Q. But, at any rate, as far as the general holdings of an individual resident of the State of New Jersey were concerned, he had to pay tax on all the real estate and all the personal property he owned, except United States and State Bonds and securities, didn't he?

A. Legally, yes; practically, no.

Q. All right, that is, if he had enough influence; that is the practical part of it, isn't it?

A. No.

Redirect examination.

By Mr. von Moschzisker:

Q. What do you mean by "practically, no"?

A. I mean by practically, no, that the assessments in New Jersey under this Act do not practically include stocks and personal estate mentioned in the Act, but the personal estate is not, as a matter of fact, generally included.

Q. Well, I don't just get that, Judge. Why isn't it included practically, you say?

A. It isn't included because the, under the section 202 of the Act the personal property, which includes stocks, is [fol. 675] taxable at the ordinary tax rates of the various municipalities. That tax rate varies from approximately three and a half percent up to, in some cases, as high as six and a half percent, and if the stocks of corporations owned by New Jersey residents were taxed under this Act at their value, market value, the tax upon those stocks would be far more, in many instances, than the income from those stocks, and, therefore, assessors usually assess only the tangible property owned by the tax payer.

Q. Well, now, Judge, when you talk about stocks, do you mean foreign stocks, or do you mean domestic stocks?

A. Foreign stocks. The domestic stocks are exempted by section 203.

Q. In other words, Campbell's Soup Company stock would be exempted so far as Dr. Dorrance is concerned if he was a resident of New Jersey?

A. Yes, sir, because it is taxed,—the property of the Campbell Soup Company is taxed under the New Jersey taxing acts direct.

Mr. Gray: Will you let me cross-examine?

Recross-examination.

By Mr. Gray:

Q. Show me the section under 203, or that part of the section 203 of the Act that exempts the taxes, exempts the corporation stock of corporations organized under the laws of New Jersey from the payment of this personal property tax.

A. If you—Mr. Andrews, if you will give me the Laws of 1927—there was an amendment.

[fol. 676] Q. All right, I will come to that, I don't intend to stop you from telling us about that, but tell me whether or not under the Act of 1918, first, and then we will approach the other Act, there is such an exemption?

A. Mr. Gray, that Act was amended by the law——

Q. I understand it was amended. I will put my question a little bit differently, and we will come to the amendment in a moment, so there will be no misconstruction of the situ-

ation. My first question is, is there such an exemption as we have been discussing in the Act of 1918?

A. There is.

Q. Will you show it to me, or read it to me, either one?

A. Section 203, subdivision 5.

Q. Yes, what does it say?

A. The shares of stock of any corporation of this State which by contract with the State is expressly exempted from taxation, and the shares of stock of any corporation of this State the capital or property whereof is made taxable to and against the corporation.

Q. Well, do you mean when it was amended that that was carried into the Act of 1927, or was it changed?

A. There is no change made in that section.

Q. All right, so that the Act of 1918 with reference to the exemption of stock of New Jersey corporations where the property of the corporation itself is within the State and is taxable still remains——

A. Yes.

Q. —as the law in the State of New Jersey today?

A. Yes, sir.

Q. All right. Now, then, that exemption does not apply, however, to the holding of foreign securities, that is to say, [fol. 677] stock in any other corporations than those that are corporations under the laws of the State of New Jersey, is that so?

A. No, sir.

Q. And under the section 202——

Mr. von Moschzisker: You said, "Is that so?"; he said, "No, sir." I think he means "Yes, sir."

The Witness: They are not.

By Mr. Gray:

Q. They are not exempt?

A. They are not exempt.

Q. Yes. Now, under section 202 that I again direct your attention to, I ask you whether or not it is not so that when that property is, as you have indicated, subject to taxation, whether that Act, section 202, does not provide that it shall be valued by the assessors of the respective taxing districts?

A. It provides——

Q. So provides, doesn't it?

A. Shall be subject to taxation.

Q. Yes.

A. And shall be valued by the assessors of the respective taxing districts.

Q. And then it continues to say that "Property omitted by the assessors may be assessed as hereinafter provided," doesn't it?

A. Yes, sir.

Q. So there is provision for the assessors to assess such personal property, and a provision for taking care of such personal property as he otherwise may omit from their valuation?

A. Yes, sir.

[fol. 678] Q. That is right, and of course, Judge, you mean to say when the assessors have upon them a duty of valuing this property, and, of course, they are assessors for the purpose of assessing the tax, they are supposed not only to value it but to assess the tax on it, aren't they?

A. They are.

Q. Yes, and when you say practically, you simply mean that they do not obey the law; that is what you mean, isn't it?

A. They do not obey the law.

Q. That is right, and then there is a provision in that section 202, is there not, to the effect that "All property shall be assessed to the owners thereof with reference to the amount owned on the first day of October in each year, and the persons so assessed for personal property shall be personally liable for the taxes thereon"?

A. Yes, sir.

Mr. Gray: All right, that is all.

Mr. von Moschzisker: Well, now, I will have these marked and offered in evidence.

Mr. Gray: You are offering the Act?

Mr. von Moschzisker: Yes.

Mr. Gray: I am objecting to it as immaterial and irrelevant to this issue.

The Court: The objection is overruled.

Mr. Gray: Of course, I want to understand this, if my friends on the other side are offering it to show that Dr. Dorrance by being a resident of the State of New Jersey [fol. 679] had to pay a larger tax than he would have to

pay had he been a resident of the State of Pennsylvania during his life, and thus show that there was no motive in his declaring that he was a resident of the State of New Jersey notwithstanding the fact that his home was in Radnor, why, then it may be admissible, but I do not suppose you are offering it for that purpose.

Mr. von Moschzisker: We are offering it in connection with the tax bill, the poll tax bill.

Mr. Gray: Well, the objection, then, I won't withdraw.

The Court: In other words, you are offering it for what it is worth.

Mr. von Moschzisker: We are offering it for what it is worth, yes.

(Photostatic copy of pages 847 and 848 of Chapter 236 of the Laws of 1918 of the State of New Jersey was marked Exec. Ex. 3, 11-5-31.)

Mr. von Moschzisker: Then will you mark that?

(Copy of petition of John T. Dorrance for permission to hold the position of officer or director of more than one carrier, and order entered, was marked Exec. Ex. 4, 11-5-31.)

Mr. von Moschzisker: If Your Honor please, this document is from the Interstate Commerce Commission. When one is elected director of more than one railroad, it is called an interlocking directorate, and it has to have permission of the Interstate Commerce Commission and that is certi- [fol. 680] fied under the Act of Congress, and it is simply offered as a declaration as to residence which Dr. Dorrance made when he put in the application for that permission.

Mr. Gray: Well, Your Honor, let me say a word to Judge von Moschzisker off the record.

(Discussion off record.)

Mr. Gray: I must object. Have you offered it?

Mr. von Moschzisker: I now offer it.

Mr. Gray: I object to it, if Your Honor please, and there are several reasons that can be stated to Your Honor. In the first place, it is not important in connection with this issue, by reason of the fact it is a matter that occurred in 1924, and though it is certified by the Secretary of the Interstate Commerce Commission as being a true copy of something that is on file, I submit to Your Honor that that does not make it admissible in evidence; and it is also certi-

fied as being a true copy of a petition that is on file, alleged to be signed by John T. Dorrance, but there is absolutely no proof that that petition signed by some one is signed by some one in the handwriting of John T. Dorrance. I must object to it.

The Court: Objection overruled.

Mr. Gray: Exception.

Mr. von Moschzisker: Does Your Honor desire any argument?

The Court: The objection is overruled.

Mr. von Moschzisker: Will you mark that as an exhibit?

[fol. 681] (Certified extract from the Census of 1930 was marked Exec. Ex. 5, 11-5-31.)

Mr. von Moschzisker: Now, if Your Honor pleases, this is a census of 1930, certified copy, officially certified, showing that the census taker put them down at Cinnaminson, New Jersey. Those other things give the history, where they were born, and so forth.

The Court: All right. It is objected to, Mr. Gray?

Mr. Gray: I haven't heard it offered, sir. I want to be in order.

Mr. von Moschzisker: I now offer the exhibit last marked in evidence.

Mr. Gray: It is objected to, if Your Honor pleases. It appears on its face to be a certification by the Director of the Census, that it is a true copy of an original return from the family of John T. and Ethel M. Dorrance. May I direct your attention to the fact, if Your Honor pleases, such certification does not make it admissible in evidence.

Secondly, this is neither a declaration of John T. Dorrance, nor of any member of his family, but simply a report made by somebody appointed as Census taker who went out and secured certain information and filed it with the Department.

The Court: What do you say to that, Judge?

Mr. von Moschzisker: I think it is an official document, part of the governmental records, a Census which must be taken every ten years under the laws of the United States, and such a record as any statement or fact therein must be assumed to be correct.

[fol. 682] Mr. Gray: I am afraid if my friend still had his position as Chief Justice he would not rule that.

Mr. von Moschzisker: I am not through yet, Mr. Gray. You were told not to stop the witnesses. Now, don't stop the lawyers.

Mr. Gray: All right.

Mr. von Moschzisker: Now, the laws, of course, are known to Your Honor and known to the rest of us, so we don't have to cite the laws.

The Court: I am not sure of that.

Mr. von Moschzisker: Well, we will assume it is known to all the rest of us, I know it is known to Your Honor, and, of course, we know that the law requires a census not only to be taken, but the census taker to ascertain from each citizen as to where his residence is, so when a residence appears upon such a document the assumption of the law is that that is in the nature not only of a record which is correct, but that the information was given by the citizen, and to that extent it is a declaration;——

The Court: I see no presumption that the information was given by the citizen.

Mr. von Moschzisker: —and that the citizen has notice of it and could change it if he desired to, and as there is no change, it stands for what it is worth.

The Court: Well, I know, but I know and you know that census takers do not always get the statements from the people whom they enumerate. I never was asked by a census enumerator where I lived. Whenever they got my residence they came up and got it from somebody else, and as [fol. 683] this does not purport to be and does not show to be a statement of Dr. Dorrance I will exclude it.

[fol. 683] Mr. von Moschzisker: Note an exception to the exclusion.

Mr. Gray: My recollection is that when Mr. Effingham B. Morris was upon the stand there was offered in evidence the records of the Girard Trust Company, and that I agreed with the other side that they might substitute photostatic copies.

Mr. von Moschzisker: That is correct.

Mr. Gray: I believe that there was an objection to their admission in evidence on the record, and that Your Honor ruled against me and granted me an exception. If not, I desire to have the record note an objection to the admission only for that purpose. That is Your Honor's ruling.

The Court: All right, objection overruled.

Mr. Gray: I have no objection to the photostatic copy.

The Court: Objection overruled. I will admit them.

Mr. von Moschzisker: These are simply offered as the photostatic copies referred to by Mr. Gray, to the substitution of whatever was brought here to court at the time when the original exhibits were offered.

Mr. Gray: That is all right.

Mr. von Moschzisker: Mark that.

(Certified copy of non-resident hunting license of the State of Maryland was marked Exec. Ex. 6, 11-51-31.)

[fol. 684] Mr. von Moschzisker: I now offer in evidence Executors' Exhibit Number 6, which is a hunter's license issued to Dr. John T. Dorrance on October 4, 1926, in the State of Maryland, County of Harford, and which shows that Dr. Dorrance then gave his address as Riverton, New Jersey.

Mr. Gray: I must differ with my friend, the Judge, when he says that it shows that the defendant gave his address as Riverton, New Jersey.

Mr. von Moschzisker: I will withdraw that. The license shows Dr. Dorrance's address as Riverton, New Jersey.

Mr. Gray: Correct. This is not a declaration of Dr. Dorrance. It is not an application for a hunter's license.

The Court: Is it a resident's hunter's license, or foreign?

Mr. Gray: A non-resident's state hunting license.

The Court: Non-resident's?

Mr. Gray: Non-resident's state hunter's license.

Mr. von Moschzisker: Issued by Maryland.

Mr. Gray: Issued by Maryland, but, if Your Honor please, this is a declaration by no stretch of the imagination of Dr. Dorrance as to his place of residence. This is a copy of a license issued to him that contains certain information on it. It has no relevancy in this case. It is not competent testimony. I object to it for that reason.

The Court: The objection is sustained.

[fol. 685] Mr. von Moschzisker: Note an exception.

Mark that.

(Certified copy of commission to John T. Dorrance, as member of a commission to investigate the question of compensation for personal injuries or death resulting from

operation of motor vehicles, etc., was marked Exec. Ex. A-26 (No. 2).)

Mr. von Moschzisker: If Your Honor please, the paper I now hold in my hand is what we conceive to be a properly certified copy under the Act of Congress of a commission and the papers in connection therewith issued to Dr. Dorrance by the Governor of the State of New Jersey at the time he was appointed on that Commission to revise the laws as to the operation, the compulsory insurance in operation of motors. Mr. Gray made several objections when this was originally offered, some of them being on the substance of things, but, making an exception to his usual rule in this trial for some reason or other, he did object to the form of the certification. Now we have put it in such form as we conceive there will be no objection about it, and we offer this in substitution for the copy we offered before and which Your Honor admitted.

Mr. Gray: I still object. It is not properly certified and exemplified under the law, and I make the same objections as to the substance of the thing itself, that it is not admissible, not relevant, not material to this issue, and not competent testimony.

The Court: The objection is overruled.

Mr. Gray: Exception.

The Court: Exception.

[fol. 686] Mr. von Moschzisker: Now, then, a substitution, mark that the same way.

(Certified copy of record of hunting and fishing license, State of New Jersey, was marked Exec. x. A-38 (No. 2).)

Mr. von Moschzisker: This paper I now hold in my hand is a substitution for Executor's Exhibit A-38, and I think I should call Your Honor's attention to the fact that this is a fisher's license by the State of New Jersey itself.

The Court: Well, what was the other license that you had?

Mr. von Moschzisker: Well, the other was a hunter's license issued by the State of Maryland.

The Court: Oh, I thought it was issued by the State of New Jersey.

Mr. von Moschzisker: No. This one is issued by the State of New Jersey. I assume, I have not looked at that,

that is a resident of New Jersey certifying as to his own residence, to a certain extent.

The Court: I will admit that. Any objection?

Mr. Gray: I am making objection to it first because it is not properly certified or exemplified secondly because it is totally immaterial and irrelevant to this issue, and because it is incompetent testimony.

The Court: The objection is overruled.

Mr. Gray: Exception.

Mr. von Moschzisker: Now, these are substitutions.

[fol. 687] The Court: Let me see that other license I excluded.

Mr. Gray: I do not think Your Honor did exclude that, did he?

The Court: Yes, I did. I sustained your objection. I dont know whether that excluded it, or not, I presume it did.

Mr. Gray: It would.

The Court: It was intended to, anyhow.

Mr. Gray. Yes. My memory, as counsel reminded me a little while ago, is not so good.

Mr. von Moschzisker: I can see a distinction, Your Honor, as between the State of Maryland issuing one——

The Court: I thought it was a license issued in New Jersey.

Mr. von Moschzisker: It may be that the State of Maryland certifying would not have the same effect as the State of New Jersey.

The Court: I don't know.

Mr. von Moschzisker: I am satisfied to keep that out. It doesn't make any difference.

The Court: Well, then, I will over-rule the objection and admit that.

Mr. von Moschzisker: You decide to admit it?

The Court: Yes.

Mr. von Moschzisker: His Honor has decided he will admit this in evidence.

Mr. Gray: Your Honor will grant an exception?

[fol. 688] The Court: Yes.

(A copy of Exec. Ex. 6, certified copy of non-resident hunting license of the State of Maryland.)

Mr. von Moschzisker: I will offer these under new numbers to take the place of Exhibits 28-36.

The Court: Weren't they all admitted?

Mr. Gray: They were all admitted. Our friends have been a little afraid they do not comply with the law. They are offering them again in a different way.

The Court: All right.

Mr. von Moschzisker: This is simply to get the certification as we think undoubtedly right.

The Court: If you think I was wrong——

Mr. von Moschzisker: No, we are not convinced Your Honor was wrong, we are trying to save Your Honor the trouble of passing on the question, where you are wrong or right. Well, they are admitted, as I understand, and exception to Mr. Gray.

Mr. Gray: You are offering them. I am objecting to these, if Your Honor pleases. They are certified copies of the record appearing in the Commissioner of Motor Vehicles' office in the State of New Jersey, showing what purport to be applications for motor vehicle licenses. I am objecting to them on the ground that they are not properly certified or exemplified.

I am objecting to them on the ground that there is no identification of the individual who made the application with the J. T. Dorrance in this case.

I am objecting to them on the ground that there is noth- [fols. 689 & 690] ing to show J. T. Dorrance signed these applications.

I am objecting to them on the ground if there was, they are totally immaterial and irrelevant. The testimony is incompetent.

The Court: The objections are all overruled.

Mr. Gray: Exception.

(Certified copies of applications of J. T. Dorrance for auto driver's licenses, dated November 25, 1927, November 15, 1928, and November 25, 1929 were marked Exec. Ex. 7, 11-5-31.)

[fols. 691 & 692] EXHIBIT 3

Abstract of Record in the State Tax Department of New Jersey, Filed by J. H. Thayer Martin, State Tax Commissioner of New Jersey, in Review in the Supreme Court of New Jersey, on Certiorari, of the Proceedings in the

State Tax Department and Prerogative Court of New Jersey, Submitted as an Exhibit by Appellees and Incorporated in This Record by Order of the Court Above.

Exhibit 3—Pages 1-29 Inclusive

[fol. 693] Dorrance Tax Case

New Jersey Supreme Court

Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the Last Will and Testament of John T. Dorrance, deceased, Prosecutors,

vs.

J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, Respondent

On Certiorari

Appendix to Respondent's Brief

(Abstract of Record)

Following is a transcript (chronologically arranged) of the record in the State Tax Department with page references thereto as filed in this court. (Except the printed record before the Supreme Court of Pennsylvania, which appears later herein.)

May 6, 1925: Letter from decedent to Continental Storage Warehouses, Philadelphia, stating that he proposes maintaining his home at Cinnaminson, N. J., and will always keep it open (R. 177).

November 14, 1925: Letter from decedent to Henry G. Hershfield, Chairman New Jersey Commission, expressing his willingness to attend any call made for a meeting of the [fol. 694] Commission (R. 178).

December 4, 1925: Letter from decedent to Arthur W. Sewall, President, New England Society of Pennsylvania, stating that his residence at present is in the State of New Jersey, and he proposes to continue the same therein. He assumes he is therefore not eligible to membership in the New England Society of Pennsylvania (R. 179).

January 5, 1926: Letter from decedent to H. W. Bryan, Secretary, Radnor Fire Company of Wayne, Pa., stating that he is maintaining his home and residence in Cinnaminson, N. J., and on that account may not be eligible to membership in that fire company. States that he does not anticipate spending a great deal of time at Radnor (R. 180).

January 11, 1926: Agreement between decedent and his wife (one of the executors) both recited as—

"of the Township of Cinnaminson, County of Burlington, and State of New Jersey."

Recites the purchase by them, on April 22, 1925, of the Radnor residence, and that decedent and his wife—

"are still residents of 'Pomona Farms,' in the Township of Cinnaminson, in the County of Burlington and State of New Jersey, and still keep their house open at that place."

but are now occupying the Radnor property—

"and intend to occupy the same during a portion of each year."

The parties mutually agree:

1. "That the residence of said John T. Dorrance and Ethel M. Dorrance, his wife, shall continue to be at 'Po- [fol. 695] mona Farms,' in the Township of Cinnaminson, County of Burlington and State of New Jersey, as heretofore, notwithstanding the fact that * * * (they) may occupy during a portion of each year said lands and premises known as 'Woodcrest' * * *" (R. 174).

2. That neither party will change his or her residence from "Pomona Farms," Cinnaminson Township, Burlington County, New Jersey, to any other place, or undertake to do so without the written consent of the other.

3. That neither party will vote in any other voting place or election district than that in which said "Pomona Farm," at Cinnaminson Township, Burlington County, New Jersey, shall be located without the written consent of the other. The parties being now voters and are registered as such therein.

4. That neither party will file his or her income tax return in any other internal revenue district than that in which said "Pomona Farms" shall be located.

5. That neither party will claim to have any other residence than that at "Pomona Farms" in the Township of Cinnaminson, County of Burlington and State of New Jersey, without the written consent of the other.

6. In case of the death of either party the will of the one so dying shall be offered for probate in the office of the Surrogate of the County of Burlington in the State of New Jersey, without objection by the other as to the jurisdiction of said Surrogate to admit said will to probate, unless prior to the death of the one so dying it shall be mutually agreed between the parties in writing that their [fol. 696] residence shall be changed to some place other than the Township of Cinnaminson, County of Burlington (R. 176).

7. This agreement shall continue in full force and binding effect upon both parties unless changed in writing, signed by the parties (R. 176).

January 15, 1926: Letter from decedent to Francis B. Davis, expressing his view of the importance that the present Legislature (N. J.) should appoint a competent committee with ample funds to employ counsel with broad experience in corporation laws of the various states in order that New Jersey may present suggestions to the Legislature for the repeal of some and the enactment of other laws to avoid losing the incorporations of our New Jersey citizens. He mentions instances where corporations would ordinarily be incorporated in New Jersey, but were incorporated elsewhere on account of New Jersey laws. He assures Mr. Davis that there is nothing selfish in his suggestion, as he is very proud of being a citizen of the State of New Jersey and anxious that our state should lead the other states in the Union (R. 181).

February 3, 1926: Letter from decedent to Thomas D. Chalfant, Assessor of Radnor Township, Pa., acknowledging receipt of "Return of Personal Property," subject to taxation for the year 1926, which was sent to him by the tax collector with a request that he make it out and return it, sworn to, within ten days. Decedent returns the

form with his affidavit endorsed thereon showing that he is a resident and voter in Cinnaminson Township, Burlington County, New Jersey, and that he intends to continue to vote and reside therein; that he is advised that under these circumstances, not being a resident of Penn- [fol. 697] sylvania, he is not subject to taxation therein upon personal property shown upon the form (R. 182)

September 28, 1926: Letter from decedent to the society editor of the Philadelphia Ledger referring to a published statement therein that decedent's daughter would entertain at "Woodcrest," Radnor, on October 10th, and stating that the statement was not correct as there would be no entertainments on that date "either at 'Woodcrest,' Radnor; or at my home, 'Pomona Farm,' Cinnaminson, N. J." (R. 183).

December 6, 1926: Letter from decedent to Laura Bishop, Burlington, N. J., stating that he is perfectly satisfied with the servants "I now have at my home at Cinnaminson" (R. 183).

January 10, 1927: Letter from decedent to Reverend Richard Gurley, St. Martin's Church, Radnor, Pa., stating that

"inasmuch as we are maintaining our residence at Cinnaminson, N. J., and membership in Christ Church, Riverton, N. J., in which church I am Senior Warden, it is not Mrs. Dorrance's or my desire that we or our children be included in the membership of St. Martin's Church, Radnor" (R. 184).

April 1, 1927: Letter from decedent to Thomas A. McCarter expressing a desire to correct the impression contained in Mr. McCarter's letter of March 29, 1927, that decedent is no longer a Jerseyman.

"For twenty years I have maintained a residence in New Jersey, and still do. Our home at Cinnaminson, N. J., is always open, and Mrs. Dorrance, the children, and I get a great deal of pleasure spending a portion of each month there, except when we are in Europe" (R. 185).

[fol. 698] April 4, 1927: Letter from Mr. McCarter to decedent, expressing his pleasure to hear that decedent was still a legal resident of New Jersey (R. 185).

June 8, 1927: Statement by decedent that his residence on his customs' declaration is Cinnaminson, N. J.; that the matter of residence was taken up at the meeting of the directors of the Pennsylvania Railroad Company that day at which he stated that he was not a resident of Pennsylvania (R. 186).

June 8, 1927: Signed declaration of decedent declaring that he is a resident of Cinnaminson Township, Burlington County, New Jersey, and a voter in said township and voted therein at the General Election held in November, 1926; that he has not in any way changed his residence since that time and intends to vote there as a resident of said township at the next general election (R. 186).

November 6, 1927: Letter from decedent to John M. Scott, of Philadelphia, acknowledging a letter of the day before inviting decedent to become a member of the Pennsylvania Society of the Sons of the Revolution. Decedent expresses doubt as to his eligibility therein "as I am a resident of Cinnaminson, Burlington County, New Jersey, and propose to maintain my residence there" (R. 187).

March 15, 1928: Letter from decedent to Owen J. Roberts, of Philadelphia, acknowledging receipt of a letter of a previous date inviting decedent to attend a dinner at Philadelphia to discuss public charity for Pennsylvania and stating,

"I am a resident of the State of New Jersey, and would [fol. 699] consider it quite out of place for me to discuss methods by which residents of Pennsylvania should collect and distribute their charity" (R. 188).

April 27, 1928: Letter from decent to Eldridge R. Johnson, stating that he hastens to correct an impression of Mr. Johnson that decedent is non-resident in the State of New Jersey, stating——(R. 189).

"I am now, and have been a resident of the State of New Jersey continuously since I first voted, and Mrs. Dorrance, our children and I propose to continue to hold our residence in New Jersey, where we maintain a home in which we keep a minimum of four servants throughout the year. Also, we will continue to be more interested in the welfare of our State.

"While at present my family do not go as often as they desire to Cinnaminson, this is due to the illness of my

mother and sister, who live there, and our fear that the children might annoy the invalids. This year we expect to spend at least two months at home in Cinnaminson."

May 15, 1928: Last will and testament of decedent (R. 192-228).

Probated in Burlington County, New Jersey, October 2, 1930.

Preamble recites decedent "of the Township of Cinnaminson, in the County of Burlington and State of New Jersey" (R. 192).

7. Gives to wife, Ethel M. Dorrance, all his clothing, furnishings, household goods, etc., and "all of the furnishings and furniture and household goods and household effects of every kind and description, namely used by my wife and myself in the house where I now reside in Cinnaminson Township, Burlington County, N. J. * * *" (R. 194).

[fol. 700] 8th. Gives to wife all automobiles, horses, wagons, vehicles, etc. (R. 194-195).

9th. Gives to his son his library (R. 195).

10th. Gives to his wife $100,000.

12th. Gives to his executors in trust, $200,000 for the benefit of his mother (R. 196).

13th. Gives to his executors, in trust, $360,000 and directs the income thereof to be paid to his three sisters (R. 196-197).

14th. Gives all the rest, residue and remainder of his estate to his executors, in trust, for purposes therein mentioned. The payment of proceeds to his wife and children in the proportions therein directed, namely, two shares to his wife, two shares to his son and one share to each of his four daughters, payable monthly. This trust to continue for a period not exceeding 16 years, with directions for distribution of principal upon contingencies therein mentioned (R. 197-211).

16th. Appoints his wife, Ethel M. Dorrance, his brothers, George Morris Dorrance, M. D., and Arthur C. Dorrance, and Camden Safe Deposit and Trust Company, executors (R. 211-212).

17th. Appoints his executors trustees with provision to fill vacancies (R. 213-214).

18th. Appoints Camden Safe Deposit and Trust Company, Guardian of minor children with power to maintain and educate them until they maintain the age of 21 years, respectively (R. 214-215).

28th. Directs that if any person entitled to any interest whatever in the estate under the provisions of this will, shall take, or on whose behalf are taken, any proceedings to contest or prevent its probate, such person shall receive [fol. 701] no interest, income, or benefit whatsoever under the will, and any legacy or interest given or bequest to such person by the will is revoked (R. 223).

33rd. Directs that if any of its executors therein named shall fail or refuse to make application to the Surrogate of the County of Burlington, or to the Ordinary of the State of New Jersey for the probate of thi will within thirty days after decedent's death, such executor or executors shall cease to be executors or trustees, and his appointment thereof shall cease and be void and of no effect and he revokes their appointment as executors and trustees (R. 226).

35th. Directs his executors and trustees to appoint "my attorney, William D. Lippincott," as proctor in connection with the settlement of the estate and the administration of the trusts under the will (R. 227-228).

36th. Directs that the provisions for the bequests to his wife made in the will are to be accepted by her in lieu of dower (R. 228).

October 29, 1928: Letter from decedent to William M. Elkins, saying:

"I am legally a resident of New Jersey. My business is located here in New Jersey, and all of my principal interests are centered in this State. I feel that my obligations toward New Jersey charities are at least ten times as great as are my obligations in Pennsylvania—and these latter are very far from being limited to the Welfare Federation." (R. 190.)

September 5, 1929: Letter from decedent to Harrison S. Morris, chairman of Finance Committee, Philadelphia, ad-

[fol. 702] vising him that decedent is a resident of the State of New Jersey (R. 191).

March 20, 1930: Letter from decedent to William D. Lippincott, inquiring whether the law permitting absentee voting in New Jersey is still in effect and stating that decedent and his wife are especially anxious to vote in Cinnaminson Township, the place of their residence, in the coming election and want permission, if possible, for absentee voting (R. 191).

October 1, 1930: (Received August 17, 1931.) Petition signed and sworn to by Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance, and Ephraim Tomlinson, President of Camden Safe Deposit and Trust Company to the Surrogate of Burlington County, New Jersey, entitled "In the matter of the probate of the last will and testament of John T. Dorrance, deceased, petition for probate and letters testamentary," showing that the signers of that petition are the executors named in the last will and testament of decedent dated May 15, 1928; that he died "at his residence in Cinnaminson Twp., in the County of Burlington, and State of New Jersey, on Sunday, the 21st day of September, A. D. 1930"; that he left him surviving as his heirs at law and next of kin the following persons (R. 157):

[fol. 703]

	Kin	P. O. Address
Ethel M. Dorrance	Widow	Riverton, N. J.
Elinor Dorrance Hill	Daughter	993 Park Ave. New York City
Ethel M. Dorrance, Jr.	"	Riverton, N. J.
Charlotte K. Dorrance, 18 years	"	"
Margaret W. Dorrance, 14 years	"	"
John T. Dorrance, Jr., 11 years	Son	"

The petitioners applied for probate of said will and for letters testamentary thereon (R. 158). Attached to the petition for probate is a certificate dated August 15, 1931, of the Surrogate of Burlington County, N. J., that the foregoing is a true copy of the petition for probate and letters testamentary, filed in the office October 1, 1930 (R. 158).

October 2, 1930: (Received August 17, 1931.) Certificate of the Surrogate of Burlington County, New Jersey,

"That Ethel M. Dorrance, Arthur C. Dorrance, both of Burlington County, George Morris Dorrance, M. D., of Phila. County, Pa. and Camden Safe Deposit and Trust Company, a corporation of the State of New Jersey, the executors named in the last will and testament of John T. Dorrance, late of the County of Burlington, deceased, and that they proved the same before me, and are duly authorized to take upon themselves the administration of the estate of the testator agreeably to said will" (R. 161).

Attached to the foregoing certificate is a certificate of the Surrogate of Burlington County, dated August 15, 1931, that the foregoing is a true copy of letters testamentary dated October 2, 1930, issued to decedent's executors [fol. 704] therein named, recorded in Will Book 61, p. 266, in the office of said Surrogate (R. 162).

May 2, 1931: (Received May 5, 1931) Letter from William D. Lippincott to William D. Kelly, State Supervisor, Transfer Inheritance Tax Bureau of New Jersey, stating that as Mr. Kelly has been previously informed, the executors have received from the register of wills of Delaware County, and agent for the Commonwealth of Pennsylvania, for the calculation of the transfer inheritance taxes, a notice and appraisement, a copy of which is enclosed, claiming that decedent was a resident of Radnor Township, Pennsylvania, and claiming taxes due Pennsylvania, amounting to $31,465,200.00, based upon a valuation of $199,999,000.00, which valuation Mr. Lippincott says was fictitious and without foundation save in newspaper reports.

States that the writer is informed that an appeal from that appraisement may be taken within 30 days from the date of the appraiser's report, to the Orphans' Court of Delaware County, Pa. which is empowered to determine the valuation and liability and that thence and appeal may be taken to the superior or supreme court of Pennsylvania.

States that he annexes to the letter a statement of the facts as to decedent's residence in New Jersey, and expresses his opinion that under those facts there is no doubt whatever that if the question of decedent's domicile were to be decided in New Jersey courts, decedent's domicile must be found to be in Cinnaminson Township, Burlington County, New Jersey, under the New Jersey decision, upon that subject (R. 165).

[fol. 705] States that the appeal from the attempted taxation by Pennsylvania is unfortunately to be heard in Pennsylvania courts. States that, without reflecting in any way upon those courts, the prize is a rich one for Pennsylvania to secure, and that the Pennsylvania authorities will not stop at anything in their efforts to secure an adjudication upholding the assessment.

States that decedent had acquired a domicile in New Jersey many years prior to his death, and he intended to retain his domicile in New Jersey up to the time of his decease.

Expresses the opinion that the statement of facts annexed to that letter and the copies of documents and correspondence also annexed, conclusively show decedent's legal residence to be in New Jersey.

States that in view of the large amount of tax involved and that the executors deem it essential that there should be an ultimate right to have the case on the Pennsylvania tax heard on appeal in the United States Court, he suggests that New Jersey intervene and be represented in the Pennsylvania proceedings respecting that assessment.

States that the executors have retained counsel (whose names are given) to take up the active preparation of the case in Pennsylvania. Suggests that Mr. Kelly consult the Attorney General of New Jersey on the question of having New Jersey intervene in the Pennsylvania litigation, so that if there should be an adverse decision in the Pennsylvania courts, the executors may still have recourse to the United States courts for the final determination of the questions involved.

Expresses the willingness of Mr. Norcross and himself to come to Trenton at any time and give such further informa-
[fol. 706] tion within their possession as may be desired (R. 167).

May 2, 1931: Accompanying the last mentioned letter of the same date, is a "Statement of facts as to the domicile of Dr. John T. Dorrance, in New Jersey," submitted by Mr. Lippincott with that letter, stating:

Decedent was born at Bristol, Pa., and lived there until he graduated from college. After taking his doctor's degree in Germany in 1897, he entered the employ of a company in Camden, New Jersey, a predecessor of the present

Campbell Soup Company, and resided in Camden, after August, 1906, when he was married. Thereafter he continued to reside in Camden, for a time and then went to live in Philadelphia.

In 1911 decedent and his wife took up their residence on an estate known as Pomona Farms. Cinnaminson Township, Burlington County, N. J., where decedent died. They resided there continuously until November, 1925, and voted in Cinnaminson Township and nowhere else after 1911. Decedent rented this property from Campbell Soup Company. Three of their five children were born at their residence at Cinnaminson, one was born in a hospital. Cinnaminson was the domicile of decedent's choice.

In May, 1925, decedent and his wife acquired an estate called "Woodcrest" in Radnor Township, Delaware County, Pa., and later other property adjoining the same, by deeds to them both. Decedent's occupancy at that property began November 18, 1925, but decedent and his wife kept the Cinnaminson house open at all times and maintained servants there, never less than two but most of the time three, in number. The house and the servants were [fol. 707] ready at all times for decedent and his wife to occupy (R. 168). States that Mr. Lippincott has a memorandum taken from a diary of the time spent by decedent at Cinnaminson, but he is quite certain that decedent and his wife spent more time there than is shown by that memorandum. The memorandum shows the diary record for the years 1926-1930; inclusive, as stated on (R. 169-170).

In 1926 and 1927 decedent took a house at Jamestown, Rhode Island, and in 1928, 1929 and 1930, he had a house at Bar Harbor, Maine.

Decedent was senior warden of Christ Church, Riverton, N. J., and retained that office and his membership there until his death. Refers to a letter of January 10, 1927, to the Rector of St. Martin's Church, Radnor, Pa. (R. 169).

Decedent and his wife did not spend as much time at Cinnaminson as they had intended because decedent's sister and mother were there in their last illnesses and both died there.

The intention of decedent to retain his legal residence in New Jersey is evidenced by an agreement, dated January 6, 1926, (copy attached), between decedent and his wife,

and by letters written by decedent to various persons (copies attached). The agreement between decedent and his wife (elsewhere abstracted), committed the parties against changing their domicile from New Jersey without notice. Mr. Lippincott states no such notice was ever given by decedent.

Mr. Lippincott states that every document signed by decedent of which he has any knowledge, stated decedent's residence as being in Cinnaminson Township, Burlington County, New Jersey. The wills executed by decedent, after he acquired the Radnor property, stated decedent's resi- [fol. 708] dence as the Township of Cinnaminson, County of Burlington, State of New Jersey.

Decedent's application for passport stated the same residence; likewise his application for automobile licenses (R. 171).

Decedent stated to Mr. Lippincott, at the time he purchased the Radnor property, at the time he executed his will, and at many other times during Mr. Lippincott's association with him, after the year 1925, that decedent's legal residence was at Cinnaminson and that he did not intend at any time to acquire a legal residence in Pennsylvania.

During the year preceding decedent's death, his brother Arthur C. Dorrance talked with decedent about acquiring from the Soup Company, a residence site in Cinnaminson Township. Decedent told his brother, at that time, that decedent had made his home at Pomona Farms, Cinnaminson, ever since the property was remodeled in about 1911 and that he intended to continue to make his home there for the rest of his life, regardless of what additional residence he might acquire in Pennsylvania, Maine, or in any other state.

When decedent was elected, on October 13, 1926, a Director of Pennsylvania Railroad Company, he gave his residence and Post Office address as Cinnaminson, New Jersey. All communications from the secretary of that company were sent to decedent's Camden office. His address was never changed. He was elected to that board with the full knowledge that he was a citizen of the State of New Jersey.

Mr. Lippincott was informed by Harry A. Kelleher, an [fol. 709] employee of the Soup Company, who had charge of all applications for decedent's passports, automobile li-

censes for New Jersey and Pennsylvania during the period of 15 years prior to decedent's death, that decedent always instructed him that his place of residence was Cinnaminson, Burlington County, New Jersey, although on numerous occasions decedent's business address in Camden, was used in applying for automobile licenses.

States that a passport application in March, 1927, for decedent and his wife and another in March, 1929, for decedent, his wife, two daughters and a son, stated their address as Cinnaminson Township, Burlington County, New Jersey (R. 173).

Decedent's last letter to Mr. Lippincott, dated March 20, 1930 (copy attached), stated that decedent and his wife were especially anxious to vote in Cinnaminson Township at the coming election and desired the privilege of absentee voting, and decedent seemed greatly disappointed when Mr. Lippincott informed him that such permission could not be obtained. Copies of other letters of decedent are attached.

Decedent and his family spent the greater part of their time at Woodcrest, Radnor Township, Delaware County, Pa. and employed a large number of servants there. The house at Woodcrest was always open, except when the family were away for the summer. The Cinnaminson house was always open (R. 173).

May 13, 1931: Letter from John McCutcheon, Comptroller of the Treasury (N. J.) by the State Supervisor of the Transfer Inheritance Bureau to William D. Lippincott, acknowledging the latter's letter of May 2, 1931, containing [fol. 710] statement of facts with reference to decedent's domicile, and stating as follows (R. 163):

"After a very careful consideration of all available data, including the oral statement submitted by you during your recent appearance, the Department has concluded that the legal domicile of the decedent at the date of his death and for many years prior thereto was Cinnaminson, Burlington County, New Jersey. The completion of the transfer inheritance tax proceeding is being held in abeyance pending the receipt of the additional information called for by letter addressed to the Camden Safe Deposit & Trust Co., under date of April 27, 1931.

"In your letter you refer to the litigation that will result from the attempt of the State of Pennsylvania to levy.

an inheritance tax against the estate of this decedent, based upon the theory that the decedent died a resident of that state, and you suggest that the State of New Jersey intervene. This Department is in sympathy with your theory, but a definite determination cannot be made without further study. The Department will not intervene if action of that kind will unquestionably bind the State of New Jersey by the action of the Pennsylvania courts. A discussion of this feature is advisable. It is, therefore, suggested that you call at the Department on Monday morning next, so that the entire situation may be properly discussed. If this appointment is not satisfactory, it is suggested that you arrange to appear at such time as may be convenient to you."

August 17, 1931: (Received August 17, 1931.) Letter from Frank S. Norcross, Vice-President, Camden Safe Deposit and Trust Company, to Mr. Kelly, enclosing an amended and corrected return of the assets and liabilities [fol. 711] of decedent for substitution in the place of a former return (R. 128).

August 17, 1931: (Received same day.) Amended and corrected transfer inheritance tax return on decedent's estate on printed form L-3, signed and sworn to on that date by Frank S. Norcross, Vice-President, Camden Safe Deposit and Trust Company, one of the executors of decedent, stating that decedent died September 21, 1930, leaving a will of which a copy is attached to the return. This return is entitled "In the matter of the estate of John T. Dorrance, late of Burlington County" (New Jersey) and contains certain schedules of property of decedent with the estimated market value thereof including personal property, deductions claimed, beneficiaries' relationship and interest in the estate (R. 129-134).

Said return contains (R. 150) the following recapitulations of the property of the estate:

Recapitulation

Deposits	$4,032,719.69
Stocks	89,191,106.03
Bonds	21,389,796.85
Accounts receivable	65,047.97
Notes receivable—no value—	

Life insurance	160,000.00
Miscellaneous	8,235.16
Accrued interest receivable on bank balances	13,456.98
Dividends receivable on stock payable to holders of record prior to date of death of decedent	41,976.80
Accrued interest receivable on bonds	218,124.50
Dividends on life insurance policies	1,054.94
	$115,121,518.92

[fol. 712] and endorsed thereon is the report of District Supervisor and Appraiser, submitted February 16, 1931, of Joseph V. Solan, Principal Inheritance Tax Examiner, as follows:

Value of personal property	$115,121,518.92
Value of real property	
Total estate	$115,121,518.92
Debts, expenses, etc.	3,066,118.06
Net amount of estate for distribution	$112,055,400.86

Stamped on the back (R. 156) of that return are the following notations:

"Assessment dated Oct. 16/31. Assessed by Solan."
"Assessment dated Oct. 10/32. Assessed by Solan."

October 17, 1931: Notice of transfer inheritance tax assessment of $4,521,143.90 compromised tax, marked "assessment cancelled" (R. 124).

October 17, 1931: Notice of transfer inheritance tax assessment for $12,247,333.52, marked "assessment cancelled" (R. 126).

November 16, 1931: Letter from Mr. Kelly to Camden Safe Deposit and Trust Company (attention of Frank S. Norcross) transmitting assessments of October 17, 1931, on decedent's estate, states that they are tentative only and subject to revision for any reason whatsoever other than the question of domicile. States that the State Tax Department regards the estate as subject to the provision of the

New Jersey Inheritance Tax Act relative to the estate of a resident decedent (R. 123).

[fol. 713] November 16, 1931: Letter from Mr. Kelly to William D. Lippincott acknowledging the latter's letter of November 14, 1931, states that in the litigation before Judge Hannum (Orphans' Court of Delaware County, Pa.) there was introduced in evidence a copy of the assessment showing total tax due and payable as of decedent's death, a copy of which was enclosed in that letter. States that there was not introduced in that litigation any data with reference to the tax that might be chargeable against the portions of the estate whose disposition depended upon contingencies. States that that particular feature had not been particularly discussed at that time. States that in order to expedite a definite determination of all features, the State Tax Department on that day forwarded assessments covering the direct tax and the compromise tax to Camden Safe Deposit and Trust Company, Camden, New Jersey, pursuant to instructions contained in affidavits on file. The letter enclosed to Judge Lippincott additional copies of those assessments (R. 122).

November 18, 1931: (Received November 19, 1931.) Letter from William D. Lippincott to Mr. Kelly, acknowledging receipt of Mr. Kelly's letter of November 17, 1931, enclosing the assessments of the latter date for New Jersey transfer inheritance taxes on decedent's estate (R. 121).

December 4, 1931: Petition of the executors verified by Wm. D. Lippincott, addressed to J. H. Thayer Martin, State Tax Commissioner, William D. Kelly, State Supervisor of New Jersey Transfer Inheritance Tax Bureau, alleges:

[fol. 714] 1. That decedent died September 21, 1930, leaving a will in which he appointed petitioners as his executors.

2. Recites application of executors to the Surrogate of Burlington County, New Jersey, for probate of said will pursuant to the directions and requirements thereof and that said will was admitted to probate by the Surrogate of Burlington County, New Jersey, October 2, 1931, and letters testamentary were issued thereon on that day to petitioners as executors (R. 111).

3. Recites filing by executors on April 6, 1931, with the department of the Comptroller of the Treasury Transfer Inheritance Tax Bureau of New Jersey, an inheritance tax return on said estate pursuant to law.

4. Recites that on July 1, 1931, said Tax Commissioner succeeded to the exercise of the powers and duties theretofore exercised by the Comptroller, by virtue of an act approved April 27, 1931, Chapter 303.

5. Recites that among powers and duties devolving upon said Tax Commissioner under that act, was the duty of appraising the estates of decedents and assessing and levying taxes thereon.

6. Recites that on October 17, 1931, the executors, in order to adjust the values of certain assets and the amount of certain liabilities of decedent as of the date of his death, as a result of further investigations made, and further information received, by them, filed with the State Tax Commissioner an amended State Tax Return of said estate (R. 112).

7. Recites that on October 17, 1931, the State Tax Commissioner made an assessment against said estate as the estate of a resident decedent of transfer inheritance taxes [fol. 715] of $12,247,333.52, and on the same day he made an additional assessment on said estate as of a resident decedent of $4,521,143.90 and said assessments were filed on that day in the office of the State Tax Commissioner.

8. Recites that said estate was appraised as a resident decedent, at the value of $111,842,054.58.

9. Recites that on March 26, 1931, the Register of Wills of Delaware County, Pa., claiming decedent to be domiciled in Pennsylvania at his death appointed an appraiser to appraise the estate of decedent in Pennsylvania.

10. Recites that the appraiser claiming to act under the laws of Pennsylvania appraised the entire estate of decedent, as a resident of Pennsylvania, claiming him to be domiciled therein, at $199,900,000.00; that on April 22, 1931, Pennsylvania assessed the estate of decedent, as a resident thereof, for transfer inheritance taxes in the amount of $31,465,200.00, from which assessment the executors have taken an appeal to the Orphans' Court of Delaware County, Pennsylvania (R. 113).

11. Recites that the Commonwealth of Pennsylvania claims that decedent was domiciled therein at the time of his death and that the appraisement and assessment by that state of transfer inheritance taxes are based on that claim.

12. Recites that said appeal was heard by the Orphans' Court of Delaware County, Pa., after the filing by the State Tax Department of New Jersey of the two assessments previously made by the State Tax Commissioner, and that a large amount of testimony relating to and bearing upon [fol. 716] the domicile of decedent, at the time of his death, has been taken before the Orphans' Court of Delaware County, Pa., upon the hearing of that appeal and said appeal is still pending and undetermined before that court.

13. Recites that prior to the assessments made by the State Tax Commissioner of New Jersey the executors submitted to the Transfer Inheritance Tax Bureau of New Jersey certain evidence as to the domicile of decedent, and of other matters relating to his estate (R. 114).

14. Recites that after filing said assessments by the State Tax Commissioner of New Jersey the executors obtained a large amount of information, facts and evidence relating to and bearing upon the domicile of decedent which was not in the possession of the executors at the time of filing said New Jersey asesssment; that the executors are desirous of submitting and presenting such additional information, facts and evidence to the Transfer Inheritance Tax Bureau of New Jersey, before any final determination of said assessments is made by its State Tax Commissioner; that the executors believe that said additional information, facts and evidence so obtained by them, after the New Jersey assessments were filed, together with other information, facts and evidence in their possession, not previously submitted or presented, are necessary to be considered by the State Tax Department of New Jersey before final action can properly be taken by that Department respecting the assessment of transfer inheritance taxes upon decedent's estate (R. 114-115).

The executors pray that the New Jersey assessment of October 17, 1931, assessed against decedent's estate, as an

[fol. 717] estate of a resident decedent, be opened, set aside and cancelled and for nothing holden, and that the proceedings for said assessments now pending in the State Tax Department of New Jersey, be opened, and that permission be granted to the executors to submit and present to the Transfer Tax Bureau of New Jersey, further and additional information, facts and evidence relating to and bearing upon the domicile of decedent, and other information, facts and testimony relating to and bearing upon his estate.

The petition is signed by William D. Lippincott, proctor for and of counsel with petitioners (executors) (R. 116).

December 12, 1931: Order of State Tax Department Inheritance Tax Bureau reciting the filing of the petition of executors with a summary of the contents thereof (R. 117), and ordering that said assessments of October 17, 1931 (R. 119), be and the same is hereby opened, set aside and cancelled and for nothing holden, and that the proceedings for such assessments be and the same are thereby opened and permission given to the executors to submit and present further and additional information, facts and evidence relating to and bearing upon the domicile of decedent and other information, facts and testimony relating to and bearing upon said estate. Signed J. H. Thayer Martin, State Tax Commissioner (R. 118, 120).

December 12, 1931: Letter from Mr. Kelly to William D. Lippincott stating that the petition of the executors for the cancellation of the tentative assessment theretofore completed and for permission to submit further and additional information, facts and evidence relating to and bear-[fol. 718] ing upon the estate of decedent, has been filed and allowed and that the order to that effect has on that day been signed and entered in the record of the proceedings. Encloses copy of petition and order (R. 109).

December 14, 1931: (Received December 16, 1931.) Letter from Wm. D. Lippincott to Wm. D. Kelly, acknowledging Mr. Kelly's letter of the 12th, reciting its contents, and acknowledging copies of petition and order therein mentioned.

States that much of the additional evidence to be submitted will consist of the evidence presented before the

Orphans' Court of Delaware County, Pa., upon the appeal of the executors from the Pennsylvania assessment.

States that when the argument of that case is completed he will submit further and additional information, facts and evidence relating to this estate (R. 107).

February 15, 1932: Decision of the Orphans' Court of Delaware County, Pa., on the appeal of the executors from the assessment of transfer inheritance taxes assessed under the laws of Pennsylvania, holding that decedent at the time of his death was domiciled in the State of New Jersey (R. 832-719).

Decree setting aside the Pennsylvania appraisement.

March 7, 1932: Letter from Williard F. Lippincott to Wm. D. Kelly, State Supervisor, etc. enclosing copy of testimony and exhibits on appeal from the assessment of Pennsylvania inheritance taxes in the Orphans' Court of Delaware County, Pennsylvania.

[fol. 719] Testimony: Pp. 1-529.

Exhibits: Pp. 530-839, except p. 828-839, which are missing, and contain six oaths of office of Dr. Dorrance as Director of the National Bank of Commerce in New York.

States that it also encloses other testimony, pages 1 to 936 (a). Requests reading of this testimony before March 25, since Wm. D. Lippincott desires to confer with Mr. Kelly, shortly after his return on that date.

Requests acknowledgment of receipt of letter and enclosure (R. 106-107).

September 26, 1932: Decision, Supreme Court of Pennsylvania reversing decree of the Orphans' Court of Delaware County, Pa., respecting assessment of transfer inheritance taxes in Pennsylvania (reported 309 Pa. 151, 163 Atl. 303).

Majority opinion holding decedent was domiciled in Pennsylvania (R. 37-60).

Dissenting opinion of Justice Schaffer (R. 66-70).

Dissenting opinion of Justice Kephart (R. 61-65).

October 10, 1932:

Assessment of Transfer Inheritance Taxes

Amount of Estate	Personal	$115,121,518.92
	Real	
Debts, Expenses, &c		3,066,118.06
Net Estate for Distribution		$112,055,400.86
Exempt Interests and Contingent		28,287,149.36
Taxable Interests		$83,768,251.50
Analysis of tax—		
Tax 1% to 6% inc.		$12,247,333.52

[fol. 720] [Stamp:] Assessment Dated Oct. 10, 1932. Assessed by Solan. Re-audited by ——.

With analysis of tax (R. 104), and analysis of estate (R. 105).

October 10, 1932: Notice of transfer inheritance tax assessment; direct taxes $12,247,333.52.

John T. Dorrance, Jr.	$3,485,136.17
Ethel M. Dorrance	2,374,829.63
Mary S. D. Blake	5,843.22
Eleanor W. D. Dudley	6,014.38
Ethel M. Dorrance, Jr.	1,583,739.86
Eleanor D. Hill	1,566,925.01
Charlotte K. Dorrance	1,599,086.14
Margaret W. Dorrance	1,625,759.11

With notice that if these taxes are paid after September 21, 1931, interest at 10 per cent. per annum to date of payment should be added (R. 102).

October 10, 1932: Notice of transfer inheritance tax assessment, compromise tax $4,521,143.90 (R. 100).

October 10, 1932: Letter from Wm. D. Kelly, State Supervisor of New Jersey Transfer Inheritance Tax Bureau, to Wm. D. Lippincott, enclosing transfer inheritance tax assessment of that date.

States that transfer of portion of the estate aggregating $28,257,149.36 depends upon contingencies making it

impossible at that time to definitely determine the amount of tax chargeable against such transfers. Suggests a compromise tax on such contingencies for immediate payment of $4,521,143.90 for which bill is enclosed.

[fols. 721 & 722] States that if suggested compromise is unacceptable and adjustment of taxes on contingencies is to be deferred until the happening thereof, upon notice to that effect New Jersey Transfer Inheritance Tax bills will take up the matter of filing bonds to secure the ultimate payment of that tax, which is in addition to the direct tax of $12,247,333.52, for which bill was enclosed and which became due and payable as of the death of decedent (R. 98-99).

October 12, 1932: (Received October 13, 1932.) Letter from William D. Lippincott to William D. Kelly, State Supervisor Transfer Inheritance Tax bills, acknowledging letter of October 10, 1932, enclosing transfer inheritance tax assessment of that date for $12,247,333.52, together with bill for compromise tax at $4,521,143.90.

States that on September 24, 1932, the Supreme Court of Pennsylvania held decedent's domicile at time of his death, September 21, 1930, was in Pennsylvania and that there was accordingly due to Pennsylvania, inheritance transfer taxes on decedent's estate.

States that executors will appeal from New Jersey assessment and will be unable to make any agreement as to the compromise tax proposed (R. 97-98).

December 15, 1932: Certificate of J. H. Thayer Martin, State Tax Commissioner, to transcript of record consisting of bills for taxes, analysis of taxes, executors' inheritance tax return, petition and order, will, statements, exhibits, letters, etc., as of record in the office of the State Tax Commissioner (R. 95-96).

[fol. 723] Portion of Abstract of Record Entered in the Supreme Court of New Jersey on Review, on Certiorari, of Proceedings in the State Tax Department and Prerogative Court of New Jersey, Entered by Appellees as an Exhibit and Incorporated in This Record by Order of the Court Above.

Exhibit 3—Pages 142-158, Inclusive

[fol. 724] Abstract of Exhibits

Executors' Exhibits

Exhibit "A": Consists of copies of executors' application dated October 1, 1930, to the Surrogate of Burlington County for the probate of decedent's will of May 15, 1928. (Same as pages 49 and 50 of transcript.)

Decedent's last will and testament (same as pages 84 to 118 of the transcript of record) (pp. 923a-960a).

Exhibit "B": Copy of an inventory and appraisement of the estate of deceased, filed by his executors April 17, 1931, in the office of the Surrogate of Burlington County, New Jersey, gross value of estate $114,850,733.39 (pp. 960a-961a).

Exhibit "C": New Jersey Transfer Inheritance Tax Assessments, October 19, 1931 (p. 961a). (Same as pages 3 and 4 of transcript of record.)

Exhibit "D": Agreement of January 11, 1926, between decedent and his wife (pp. 961a-964a). (Same as pages 62-4 of transcript of record.)

Exhibit "E": Duplication of Exhibit "D."

Exhibit "F": Letter of March 20, 1930. Decedent to Lippincott (p. 965a). (Same as page 83 of transcript of record.)

Exhibit "G": Decedent's will of May 5, 1925:

Preamble recites decedent "of the Township of Cinnaminson, County of Burlington and State of New Jersey"; gives to his wife household goods, etc., "in the house where [fol. 725] I now reside in Cinnaminson Township, Burlington County, New Jersey."

Codicil of same date recites decedent "of the Township of Cinnaminson, in the County of Burlington and State of New Jersey" (pp. 965a-967a).

Exhibit "I": Codicil of May 6, 1925, to will of May 5, 1925, recites decedent "of the Township of Cinnaminson in the County of Burlington and State of New Jersey" (p. 967a).

Exhibit "J": Codicil of June 30, 1925, to decedent's will of May 25, 1925, recites decedent as "of the Township of Cinnaminson, County of Burlington and State of New Jersey" (p. 967a).

Exhibit "K": Decedent's will of July 30, 1925. Recites himself as "of the Township of Cinnaminson, in the County of Burlington and State of New Jersey."

Gives to his wife household effects, etc., "in the house where I now reside in Cinnaminson Township, Burlington County, N. J." (p. 968a).

Exhibit "L": Codicil of October 17, 1925, to decedent's will of July 30, 1925. Recites decedent as "of the Township of Cinnaminson, County of Burlington, and State of New Jersey" (p. 969a).

Exhibit "M": Codicil of July 30, 1925, to decedent's will of July 30, 1925. Recites decedent as "of the Township of Cinnaminson, in the County of Burlington and State of New Jersey.

Recites the appointment of the same executors and trustees as are named in his will of May 15, 1928, and contains the same provision as paragraph 33rd of the will of May 15, 1928, regarding probate of the will in the County of Burlington, in the State of New Jersey, or before the Ordi- [fol. 726] nary of the State of New Jersey, except that it requires this to be done in 60 days after his death (pp. 969a-973a).

Proofs of execution; undertaking by executors to perform their duties; order of probate (October 2, 1930), of Surrogate of Burlington County, admitting will to probate and directing the issuance of letters testamentary to the executors (same as page 52 of the transcript), and

Exhibits "N", "O", "Q", "R", "S", and "U": Powers of Attorney, executors, and acknowledged by decedent, May 15, 1928, May 15, 1928, March 26, 1929; September 12,

1929, September 12, 1929, September 12, 1929, respectively, all reciting decedent as "of the Township of Cinnaminson, in the County of Burlington and State of New Jersey," and acknowledged before a Notary Public in the County of Burlington, State of New Jersey (p. 973a).

Exhibits "V", "W", "Y", "Z", "Z-1", "Z-2" and "Z-3": Tax receipts of the Township of Cinnaminson showing payment by decedent of poll taxes, personal property taxes and dog taxes in that township, for the year 1924 to 1930, inclusive (p. 974a).

Exhibits "A-1" and "A-2": Deed from Thomas to decedent November 20, 1909, and deed from decedent to Joseph Campbell Company, dated December 29, 1909, conveying Cinnaminson property in both of which decedent is recited as "of the City and County of Camden and State of New Jersey." (These deeds convey 76 acres, Pomona Farms") (p. 974a).

Exhibits "A-3" to "A-12": Reports of Girard Trust Company of Philadelphia, Pa., to the Banking Department [fol. 727] of Pennsylvania for periods ending March 23, 1927, October 5, 1927, December 31, 1927, March 12, 1928, December 31, 1928, October 2, 1928, March 25, 1929, October 4, 1929, December 31, 1929, and March 17, 1930, respectively, in each of which decedent is listed as one of the managers of the trust company, as "John T. Dorrance, Camden, N. J." (p. 875a).

Exhibit "A-13": Stipulation of counsel that the poll books in the custody of the Township Clerk of the Township of Cinnaminson, Burlington County, New Jersey, containing records of ballots issued to voters at primary, general and other elections in that township (with certain exceptions there noted), show that decedent voted there at primary elections in 1920, 1921, 1924, 1928 and 1929; general elections 1924, 1925, 1926, 1927, 1928 and 1929; special election 1927, and that his wife voted there at primary elections 1920, 1921, 1924, 1927, 1928 and 1929; general elections 1924, 1925, 1926, 1927, 1928 and 1929; special election 1927. Those books show that neither decedent nor his wife voted in the primary elections in June, 1926, or July, 1930, or in the general election in November, 1930 (after decedent's death).

Also stipulated that neither decedent nor his wife voted in Radnor Township, Delaware County, Pennsylvania, from September 28, 1920, to November 4, 1930. (Decedent died September 21, 1930) (pp. 975a-977a).

Exhibit "A-13½": Letter of January 10, 1927, from decedent to Gurley (same as page 73 of transcript) (pp. 477a-978a).

Exhibit "A-14" to "A-21": Annual reports of Campbell Soup Company, a corporation of New Jersey, to the Secre- [fol. 728] tary of the State of New Jersey for the years 1923 to 1930, inclusive executed by decedent as President (except those of 1925 and 1929). In each of these reports decedent is listed as director and president.

In the reports of 1923, 1924, 1926, 1927 and 1929 his address is given as Camden, N. J.

In the report of 1925 it is given as Riverton, N. J.

In the reports of 1928 and 1930 his address is given as Pomona Farms, Riverton, N. J. (pp. 978a-979a).

Exhibit "A-22": Same as page 65 of the transcript (p. 979a).

Exhibit "A-23": Letter of April 27, 1925, from Continental Storage Warehouse to decedent mentioning his purchase of Radnor property and offering their service for packing and moving furniture from his present residence to Radnor (p. 980a).

Exhibit "A-24": Same as page 70 of transcript (p. 981a).

Exhibit "A-25": Letter from decedent (undated) to Republican Voters, addressed from "Pomona Farms, Cinnaminson, New Jersey," referring to primary day, September 23, and the selection of a Republican candidate for United States Senator stating—"This is a great state. It is your home and my home." "As one voter to another, as one resident of New Jersey to another, I take the liberty to ask you to consider how splendidly Senator Walter E. Edge measures up to this big job."

"He is a candidate for re-election" (p. 982a).

Refers to Senator Edge's election as United States Senator in 1918 and that he is a supporter of President Coolidge. [fol. 729] He urges the voters to vote for Senator Edge on primary day (p. 983a).

(Note: Senator Edge was elected in 1918, and re-elected in 1924. This letter must have been issued in 1924, shortly previous to the September primaries.)

Exhibit "A-26": Letter dated October 29, 1925, from George S. Silzer, Governor, to the Secretary of State of New Jersey, appointing decedent "of Cinnaminson" on a committee created by the Legislature of New Jersey in 1924 to investigate the question of compensation of personal injuries or death, resulting from the operation of motor vehicles, etc. (p. 984a).

Exhibit "A-26": (No. 2): Commission dated October 29, 1925, signed by George S. Silzer, Governor, of New Jersey, under the great seal of New Jersey, appointing decedent as a member of said commission (pp. 985a-986a.)

Exhibit "A-27": Letter dated October 14, 1931 from William G. Dearden, Chief Clerk, Office of New Jersey Commissioner of Motor Vehicles, advising that records of that department are kept for a period of three years and that they have records from 1928 to 1931, previous records having been destroyed (p. 986a).

Exhibits "A-28"—"A-36": Omitted by stipulation of counsel (p. 987a).

Exhibit "A-37": Showing decedent's applications under oath, dated April 19, 1923, April 15, 1925, March 17, 1927, and March 18, 1929 to the United States Department of State, for passports. In the applications of 1923 and 1925 decedent stated his permanent residence as Camden, N. J. In the application of 1927 he stated his permanent residence as Cinnaminson in the State of New Jersey. In his [fol. 730] application of 1929 he stated his permanent residence as Pomona Farms, Cinnaminson, N. J. (p. 987a).

Exhibit "A-38": Letter of December 4, 1925 from decedent to Social Register and Locater and asking to be listed therein in two places namely: "My home at Cinnaminson, N. J., and house known as 'Woodcrest,' Radnor, Pa." and subscribing for both places (pp. 987a-988a).

Exhibits "A-38½" and "A-38 (No. 2)": Omitted by stipulation of counsel (p. 988a).

Exhibit "A-39": Shows that New Jersey automobile drivers' license for year 1930 was issued to decedent at the address of Cinnaminson, Riverton, N. J. (p. 988a).

Exhibit "A-40": Pennsylvania automobile drivers' license for year 1930 issued to decedent at address Camden, Camden County, N. J. (p. 989a).

Exhibit "A-41": Same as page 80 of transcript (pp. 989a-990a).

Exhibit "A-42": Same as page 69 of transcript (pp. 990a-991a).

Exhibit "A-41½": Letter of January 11, 1926, from decedent to Senator Walter E. Edge, of New Jersey, suggesting repeal of "Seven Sisters" corporation law of New Jersey, to which he refers "our corporation laws," and urging corporation laws nearly as favorable as in other states (pp. 991a-992a).

Exhibit "A-42 1/3": Letter of January 11, 1926 from decedent to Senator Francis B. Davis, of Woodbury, N. J., expressing his interest "in our tax and corporation laws more as a citizen of New Jersey, and for the welfare of New Jersey" (p. 993a).

[fol. 731] Exhibit "A-43": Same as page 79 of transcript (p. 994a).

Exhibit "A-44": Same as page 75 of transcript (p. 995a).

Exhibit "A-45": Letter of April 25, 1928, from Eldridge R. Johnson to decedent saying "I am well aware that you are no longer a resident of New Jersey" (pp. 995a—997a). (Exhibit A-41 is a reply to this letter.)

Exhibits "A-46; A-46½; A-46 1/3; A-46¼; A-46 1/5; A-46 1/6": Oaths of decedent as director of the National Bank of Commerce for the years 1924 to 1929, inclusive, stating that he is a citizen of the United States and a "resident of the State of New Jersey" (p. 997a).

Exhibit "A-47": Deed dated April 22, 1925. Munn and wife to decedent and wife for part of Radnor property, reciting decedent as "of Riverton, New Jersey" (p. 997a).

Exhibit "A-48": Deed dated June 30, 1928; Flanigan to decedent and wife, "of the Township of Cinnaminson,

County of Burlington and State of New Jersey," for part of Radnor property (p. 998a).

Exhibit "A-49": Deed dated July 27, 1929, from Mahan to decedent and wife, "of the Township of Cinnaminson, Burlington County, New Jersey," for part of Radnor property (p. 998a).

Exhibit "A-49½": Letters dated April 4, 1930, from Collins to decedent, "of Cinnaminson, New Jersey," for house at Bar Harbor, Maine, for the summer of 1930 (p. 998a).

Exhibit 2: Chapter 68 Laws of New Jersey approved March 28, 1927, concerning the domicile of married women providing that the domicile of a married woman shall be established by the same facts and rules of law as those of [fol. 732] any other person for the purpose of voting, office holding, testacy, intestacy, jury service and taxation (p. 999a).

Exhibit 3: Chapter 236 of the Laws of New Jersey for 1918 (General Tax Act), Section 201, providing for a poll tax of $1.00 to be assessed upon every male inhabitant domiciled in New Jersey of the age of 21 years or more (p. 999a).

Exhibit 4: Petition dated November 7, 1924, signed and verified by decedent under oath requesting of the Interstate Commerce Commission authority to serve as director of the West Jersey and Seashore Railroad Company, wherein decedent states his place of residence and post office address as Cinnaminson, New Jersey (pp. 999a-1000a).

Exhibits 5 and 6: Omitted by stipulation of counsel (p. 1000a).

Exhibit 7: Applications executed by decedent under oath, to the New Jersey Department of Motor Vehicles for renewal of automobile drivers' licenses, November 22, 1927, October 26, 1928, November 20, 1929, in each of which he gave his residence as Cinnaminson, Riverton, Burlington County (p. 1000a).

Exhibit 8: Applications of decedent, under oath, dated October 28, 1929, and January 2, 1930, to the New Jersey Department of Motor Vehicles for registration and for transfer of registration of automobiles, in each of which decedent gave his street address in Camden, N. J. (p. 1001a).

Exhibit 9. Applications of decedent under oath, dated September 29, 1927 (three applications), October 25, 1928 (three applications), October 28, 1929, and October 30, 1929, [fol. 733] to New Jersey Motor Vehicle Department for registration of automobiles, in each of which he gives his street address as Camden, N. J. (p. 1001a).

Exhibits 10 and 11: Form of return for the years 1925 and 1926, issued by the County Commissioner of Delaware County, Pa., for personal property tax containing instructions that such tax is due from every person above 21 years of age who is a resident or domiciled in the State of Pennsylvania defining domicile as the place where the person permanently resides "absence for months or years will not change it so long as there is an intention of returning, and it cannot be lost until another has been acquired * * *. A temporary residence in this state (Pennsylvania) renders taxable only so much of his personal property as he has actually within the state" (pp. 1001a-1002a).

Exhibits 12 (1) and 12 (a): Applications of decedent dated May 8, 1926, for life insurance and policy dated May 11, 1926. In the application decedent stated his residence as "near Riverton, Burlington County, New Jersey," and that his only residence during the last five years was Riverton, N. J., and that no change of residence is contemplated.

The policy was issued pursuant to that application (p. 1002a).

Exhibits 13 to 18: Applications of decedent, under oath, dated October 16, 1923, November 5, 1923, August 21, 1925, February 27, 1927, June 20, 1927, and July 21, 1930, to Pennsylvania Department of Highways, for certificates of title to automobiles, in each of which decedent gave his post office address as Camden, N. J. (p. 1003a).

[fol. 734] Exhibit 19: Omitted by stipulation of counsel. (p. 1003a).

Exhibit 20: Decedent's federal state tax return. Executed by the executors on July 14, 1931 (p. 1003a).

Commonwealth Exhibits

Exhibits 1 to 3: (p. 1004a). Photographs of Cinnaminson and Radnor houses, Volume 4, Pennsylvania record (pp. 1047a, 1048a and 1049a, respectively).

Exhibit 4: Pennsylvania Inheritance Tax appraisement form headed "Estate of John T. Dorrance, late of Radnor Twp.", giving date of death, docket, volume number, page, filed April 21, 1931 but otherwise blank (p. 1004a).

Also appointment dated March 26, 1931, by the register of wills, Delaware County, Pa., of Ruby Samuel to appraise the estate of decedent "late of Radnor, in the County of Delaware, Commonwealth of Pennsylvania," who is therein stated to have died September 21, 1930, ceased of an estate subject to transfer inheritance taxes under the laws of Pennsylvania.

Also the appraisement of the estate dated April 20, 1931 at $199,990,000 with the computation of the Pennsylvania tax at $31,465,200.

Also instructions contained on the reverse side of appraisement.

Also the oath of the appraiser (pp. 1007-1010a).

Exhibits 5 and 6: Omitted by stipulation of counsel (p. 1010a).

Exhibit 7: Application (undated) of Ethel M. Dorrance (as owners) to Pennsylvania Department of Revenue for [fol. 735] 1930 automobile registration, in which she gives her address as "Radnor, Del. Co., Pa.", and a certificate dated October 27, 1931 of the Deputy Secretary of Revenue and Commissioner of Motor Vehicles of Pennsylvania certifying that this exhibit is a true copy of the original application for which registration was entered "in the name of Ethel M. D., Radnor, Pa." (pp. 1010a-1012a).

Exhibit 8: Omitted by stipulation of counsel (p. 1012a).

Exhibit 9: Ledger sheets of Bonwit-Teller & Company for the period from January 18, 1928 to July 16, 1931, of the account of Mrs. John T. Dorrance, Radnor, Pa. (p. 1012a).

Exhibit 10: Ledger sheets of Bailey, Banks & Biddle showing their account with decedent. When this account was opened July 22, 1924, his address was given as 32 N. Front St., Camden, N. J., Riverton, N. J."

On March 21, 1925, that residence was stricken out and the following substituted: "'Woodcrest,' Radnor, Pa." After decedent's death this account was continued in the

name of his widow with the address of Woodcrest, Radnor, Pa. (pp. 1012a-1013a).

Exhibit 11: Omitted by stipulation of counsel (p. 1013a).

Exhibit 12: Letter dated April 19, 1926, from decedent to Strawbridge and Clothier, Phila., stating that he has suggested to his wife that she do part of her shopping at that store and asking them to open an account in the name of "Mrs. John T. Dorrance, 'Woodcrest,' Radnor, Pa." for purchases "for delivery to 'Woodcrest'" (p. 1013a).
[fol. 736] On the reverse side of that exhibit is a stamp showing it was received April 20, 1926, and states the name "Mrs. John T. Dorrance," residence "Woodcrest," business address, Radnor, Pa. The other notations show the approval of the credit department (p. 1014a).

Exhibit 13: Bookkeeper's checkings of Strawbridge & Clothier showing various articles delivered to decedent or members of his family at Radnor, Pa., on 68 different occasions (p. 1015a).

Exhibit 14: Letter dated October 21, 1931 from the trust officer of the Bryn Mawr Trust Company, Bryn Mawr, to William A. Gray (one of the counsel for the Commonwealth of Pennsylvania, in the Pennsylvania suit) stating that his company insured title to part of Radnor property on settlement of title made May 14, 1925 from Munn to decedent and wife, consideration $350,000.

Another application on settlement of June 30, 1928, Flanigan to decedent and wife, "of Cinnaminson Township, Burlington County," consideration $52,500.

Another application on settlement of July 30, 1929 from Mahan to decedent and wife, "of Cinnaminson Township, Burlington County, N. J." Consideration $60,000 (pp. 1015a-1017a).

Exhibit 15: Excerpt from the Social Register of Philadelphia, showing decedent and his wife and family with addresses 1926, 1927, 1928, as "Woodcrest," Radnor, Pa. (p. 1017a).

For 1929, 1930 and 1931 as "Woodcrest," Radnor, Pa., and Cinnaminson, N. J. (p. 1018a).

Exhibit 16: Omitted by stipulation of counsel (p. 1018a).

[fol. 737] Exhibits 16 (1), 16 (2) and 16 (3) (p. 1019a) are photostats of the listings, card and telephone records of the Bell Telephone Company respecting telephone service at the Radnor house and are contained in Volume 4 at pages 1050a, 1051a and 1052a. Exhibit 16 (1) shows directory relisting "Dorrance, Ethel M. Res. Woodcrest, Radnor," with the name stricken out and underwritten "Dorrance, John T., Mrs." Exhibit 16 (2) shows the number of stations and extension lines on that service. Exhibit 16 (3) merely shows orders affecting the rate.

Exhibit 17: Omitted by stipulation of counsel (p. 1019a).

Exhibit 18 (1): Application for gas and electricity service at Woodcrest, Radnor, May 14, 1925, signed by Mrs. Ethel M. Dorrance. House is referred to as "occupied by me as a residence."

On the reverse side is a notation "former residence, New Jersey." "To start May 15th." "Service May 19, 1925" (pp. 1019a-1021a).

Exhibit 18 (2): Omitted by stipulation of counsel (p. 1021a).

Exhibit 19: Enrollment card (undated) of John T. Dorrance, Jr., at Montgomery (no address) School, signed by Ethel M. Dorrance, parent or guardian. "Home address Radnor, Pa." (p. 1021a).

Exhibit 20: Entry blank dated July 18, 1927, of John T. Dorrance, Jr., in Montgomery School, Wynnewood, Pa., signed "J. T. Dorrance, parent or guardian, address 'Woodcrest,' Radnor, Pa." (p. 1022a).

Exhibit 21: Entry blank dated August 13th, 1930, of John T. Dorrance, Jr., in Montgomery School, Wynnewood, Pa., [fol. 738] signed "J. T. Dorrance, parent or guardian, address 'Woodcrest,' Radnor, Pa." (p. 1023a).

Exhibit 22: Family card dated January 19, 1929, in Merion Cricket Club, Haverford, Pa., requesting cards of admission for the year 1929 for decedent's wife and three daughters, "who reside with me at address stated below"; namely, "Residence: 'Woodcrest,' Radnor, Pa." Signed J. T. Dorrance (pp. 1024a-1025a).

Exhibit 23: Family card dated January 15, 1930 in Merion Cricket Club, Haverford, Pa., requesting treasurer of the club to issue cards of admission for 1930 to decedent's wife and three daughters "who reside with me at the address as stated below:" namely "(Address) 'Woodcrest,' Radnor, Pa." Signed "J. T. Dorrance" (pp. 1025a-1027a).

Exhibit 24: Ledger sheets of Mitchell Fletcher & Co., an account with Dr. J. T. Dorrance for March, 1927, to August, 1929, showing address of decedent "Radnor, Pa." (p. 1027a).

Exhibit 24 (1): Statement of household expenses of decedent at Cinnaminson for the years 1923 to 1930, inclusive (p. 1028a); at Radnor house from 1925 to 1930 (including household expenses at Bar Harbor, Maine) (p. 1029a).

Also statement of expenses by decedent for furnishing and decorating Radnor house from 1925-1929.

Also statement of expenses of decedent at Cinnaminson for telephone, light (including cooking gas) and heat for the years 1923 to 1930, inclusive (p. 1030a).

Exhibit 25: Letter dated July 16, 1927, from decedent at Camden, N. J. to Arthur Bibby, Woodcrest, Radnor, Pa., [fol. 739] accepting resignation (p. 1031a).

Exhibit 26: Envelope enclosing the letter, return address of decedent at Camden, N. J., addressed to "Arthur Bibby, Woodcrest, Radnor, Pa." (p. 1031a).

Exhibit 27: Letter dated Monday (no other date), from Ethel Dorrance, from a hotel at Long Key, Florida, addressed to Martha (a servant), asking her to send certain clothes from different rooms and closets (without stating which house) (p. 1032a).

Exhibit 28: Envelope enclosing that letter with return address of the hotel at Long Key, Florida, post marked February 20, 1928, addressed to "Miss Martha Johnson, c/o J. T. Dorrance, Esq., Radnor, Pennsylvania" (p. 1033a).

Exhibit 29: Letter (undated) from Ethel M. Dorrance to Martha from Bay View Hotel, Jamestown, R. I., asking for certain information or data (pp. 1033a-1034a).

Exhibit 30: Envelope containing that letter post marked Jamestown, July 24, 1927, addressed to "Miss Martha Johnson, c/o J. T. Dorrance, Esq., 'Woodcrest' Radnor, Pennsylvania" (p. 1034a).

Exhibit 31: Letter dated April 18, 1928, from Ethel M. Dorrance, dated at Woodcrest, Radnor, Pa., recommending Martha Johnson as a maid (p. 1035a).

Exhibit 32: Envelope enclosing that letter with return address "Woodcrest, Radnor, Pennsylvania" (p. 1035a).

[fol. 740] Stipulation of counsel showing seventeen (17) meeting dates, from January 11, 1926 to May 9, 1930 of the Vestry of the church at Riverton, N. J., of which meetings decedent was present January 11, 1926, October 11, 1926, January 10, 1927, June 11, 1927, October 17, 1927, June 24, 1929, January 13, 1930 and March 3, 1930.

These were all the meetings of vestry held during that period. The record is taken from the minutes of the vestrymen (pp. 1035a-1036a).

Stipulation for printing record and omitting certain exhibits (p. 1037a).

[fol. 741] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 742] IN SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM 1935, No. 193

STATEMENT OF THE POINTS TO BE RELIED ON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 8, 1935

Comes now the appellant in the above-entitled case and states that the points upon which she intends to rely in this Court in this case are as follows:

I. That the District Court of the United States for the District of New Jersey erred in denying the interlocutory injunction prayed for by the plaintiff.

II. That the District Court of the United States for the District of New Jersey erred in holding that it was without

[fol. 743] jurisdiction to grant the prayer of the Bill of Complaint for interlocutory injunction.

III. That the District Court of the United States for the District of New Jersey erred in entering the following decree:

"And now, to wit, June 4, 1935, this cause came on to be heard at this term, and was argued by counsel, and upon consideration thereof, it is ordered, adjudged and decreed as follows:

"I. The prayer of the Bill of Complaint for interlocutory injunction be, and is hereby denied for want of jurisdiction to grant such interlocutory injunction."

And the appellant further states that only the following parts of the record as filed in this Court, need be printed by the Clerk for the hearing of the case:

Title of Paper—
Docket Entries.
Amended Bill of Complaint, omitting "Exhibit A" and Certificate as to Authority of Notary Public.
Injunction Affidavit of Charlotte Dorrance Wright.
Injunction Affidavit of George Morris Dorranee, M. D.
Supplemental Affidavit of George Morris Dorrance, M. D.
Motion for Temporary Restraining Order and Application for Hearing for Interlocutory Injunction.
Restraining Order.
Answering Affidavit of William D. Kelly, and the following Exhibits attached thereto:
[fol. 744] Exhibit 4.
Exhibit 5.
Exhibit 10.
Exhibit 11.

(Other exhibits to be omitted.)

Reply Affidavit of Gertrude Britton and Exhibit No. 1 Attached thereto.
Reply Affidavit of Ethel M. Dorrance.
Reply Affidavit of William H. Donnelly.
Reply Affidavit of Ethel Dorrance Colket.
Reply Affidavit of Elinor Dorrance Hill.
Reply Affidavit of Charles G. Hacker.

Answer and the following Exhibits attached thereto:

Conclusions of Prerogative Court.
Supplemental Conclusions of Prerogative Court.
Final Decree of Prerogative Court.

(All other Exhibits to be omitted.)

Opinion.
Decree Denying Interlocutory Injunction.
Petition for Appeal.
Order Allowing Appeal.
Assignment of Errors and Prayer for Reversal.
Praecipe for Record and Acceptance of Service.
Defendants' Praecipe for Record and Acceptance of Service.
[fol. 745] Plaintiff's Objection to the Incorporation in the Record of the Matters Specified in Defendants' Praecipe.
Courts Order Under Equity Rule 75.
Statement of Points to be Relied on and Designation of Parts of Record to be Printed.

Wm. A. Schnader, Solicitor for Appellant.

[fol. 746] To the Clerk:

On behalf of the appellees, I accept service of the within Statement of the Points to be Relied On and Designation of the Parts of the Record to be Printed.

Duane E. Minard, Solicitor for Appellees.

Jul. 3, 1935.

[fol. 747] [File endorsement omitted.]

[fol. 748] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1935. No. 193

APPELLEES' COUNTER DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed July 10, 1935

Come now the appellees and designate the following parts of the record which they think material, in addition to those parts designated in the appellant's designation:

Exhibits 6, 7 and 9 annexed to the answering affidavit of William D. Kelly, as printed on pages 32 to 61, both inclusive, of Appellees' printed Answering Affidavit.

"Petition of Appeal by plaintiffs to Prerogative Court," annexed as pages 49 to 59, both inclusive, to Appellees' printed Answer.

"Answer to Petition of Appeal," annexed as pages 60 to 70, both inclusive, to Appellees' printed Answer.

"Reasons on Certiorari," annexed as pages 96 to 103, both inclusive, to Appellees' printed Answer.

Appellees' amendment to Answer.

Exhibit 1-a submitted with Appellees' Answering Affidavit, the following portions:

[fol. 749] Testimony of George Morris Dorrance, M. D., pages 63a to 129a, both inclusive.

Testimony of Arthur C. Dorrance, pages 129a to 169a, both inclusive.

Testimony of William D. Lippincott, pages 174a to 230a, both inclusive, and pages 408a to 417a, both inclusive.

Testimony of Ethel M. Dorrance, pages 250a to 358a, both inclusive.

Exhibit 1-b submitted with Appellees' Answering Affidavit, the following portions: Testimony of William D. Lippincott, pages 614a to 633a, both inclusive.

Exhibit 3 submitted with Appellees' Answering Affidavit, the following portions: Pages 1 to 29, both inclusive, and pages 142 to 158, both inclusive.

Appellees' Counter Designation of Parts of the Record to be Printed.

Duane E. Minard, Solicitor for Appellees.

Jul. 3, 1935.

[fol. 750] Service hereof acknowledged this 5th day of July, 1935.

William A. Schnader, Solicitor for Appellant.

[fol. 751] [File endorsement omitted.]

[fols. 752 & 753] IN UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF NEW JERSEY

In Equity

No. 5091

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the Last Will and Testament of John T. Dorrance, Deceased, Plaintiffs,

v.

J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey; William D. Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey; Frank J. Murray, Comptroller of the State of New Jersey; William H. Albright, State Treasurer of the State of New Jersey; and David T. Wilentz, Attorney General of the State of New Jersey, Defendants

AMENDED BILL OF COMPLAINT—Filed April 10, 1935

To the Honorable the Judges of the said Court:

Plaintiffs, Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the last will and testament of John T. Dorrance, deceased, in this their amended bill of complaint against J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, William D. Kelly, State Supervisor, Inheritance Tax Bureau, [fol. 754] of said State, Frank J. Murray, Comptroller of said State, William H. Albright, State Treasurer of said State, and David T. Wilentz, Attorney General of said State, complain and say:

1. Plaintiffs are Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, the executors named in the will of John T. Dorrance, who died at Cinnaminson, New Jersey, on September 21, 1930, and was buried in West Laurel Hill Cemetery, in Philadelphia, Pennsylvania.

Camden Safe Deposit and Trust Company is a corporation organized under the laws of New Jersey, with

its principal office in the city of Camden, New Jersey. All of the individual plaintiffs are citizens and residents of the United States.

2. Defendants are, respectively, J. H. Thayer Martin, the State Tax Commissioner, William D. Kelly, the State Supervisor, Inheritance Tax Bureau, Frank J. Murray, the Comptroller, William H. Albright, the State Treasurer, and David T. Wilentz, the Attorney General of the State of New Jersey. All of them are citizens of the United States and residents of the State of New Jersey.

All of the defendants are clothed, under the laws of the State of New Jersey, with duties in the assessment and collection of transfer inheritance taxes.

3. The matter in controversy in this proceeding exceeds, exclusive of interest and costs, the sum or value of $3000 and arises under the Constitution of the United States.

4. John T. Dorrance, hereinafter in this bill called "decedent", was born at Bristol, Pennsylvania, on November 11, 1873, and, until he was 23 years of age lived in Pennsylvania except when in attendance at college and [fol. 755] university. At that age he entered the employ of Joseph Campbell Preserve Company, of Camden, New Jersey, and resided in Camden.

5. Decedent was married on August 18, 1906. He and his wife lived in Camden, New Jersey, until the latter part of the year 1907, when they moved to Philadelphia, Pennsylvania. They resided in Philadelphia until 1911, when they established their home at Cinnaminson, New Jersey, in a property owned by and leased from Campbell Soup Company, and known as "Pomona Farms".

6. In 1911, decedent was an officer of Campbell Soup Company, of Camden, New Jersey, and in 1915, he became its president. At his death he was the owner of all of the shares of capital stock of that company.

7. Decedent was survived by his wife and by five children, born, respectively, in 1907, 1909, 1911, 1915 and 1919.

8. In April, 1925, decedent purchased a residential property known as "Woodcrest", at Radnor, Delaware County, Pennsylvania, and took title thereto in the name of himself and his wife as tenants by the entireties. The property.

consisted of 119 acres, and the purchase price paid by decedent was $350,000. It was located in the finest residential section in the suburbs of Philadelphia. To prepare the property for occupancy, decedent expended an amount exceeding the purchase price.

9. On November 14, 1925, decedent removed his wearing apparel, his personal effects, his library, and the wearing apparel and other personal effects of his wife and children from Cinnaminson, New Jersey, to "Woodcrest", Radnor, Pennsylvania, and there established his dwelling [fol. 756] place and family home, without any present intention of changing it to any other place.

10. On November 14, 1925, decedent was physically present at his new dwelling place in Radnor, Pennsylvania, with the intention of making it his home and without any present intention of not residing there indefinitely.

11. Decedent was unwilling to pay the Pennsylvania four-mill tax upon his shares of capital stock of Campbell Soup Company, as he was required to do by the Pennsylvania Act of June 17, 1913, P. L. 507, its amendments and supplements. For this reason he desired to retain a "legal residence" in New Jersey, and in an effort to do so, notwithstanding the removal of his family home to Pennsylvania and the absence of any present intention not to reside there indefinitely, he continued to lease from Campbell Soup Company, "Pomona Farms" at Cinnaminson, New Jersey; occasionally, with his wife, he spent a night there; he continued to vote and pay a small personal property tax at Cinnaminson; he retained his membership in the vestry of a church at Riverton, New Jersey; and he made many declarations, including a statement in his will, that he was a resident of the State of New Jersey. Subsequent to decedent's death, tax in an amount exceeding $1,000,000 was paid by decedent's estate to Delaware County, Pennsylvania, for the years 1925 to 1930 inclusive, as required by said Act.

12. After changing his abode to "Woodcrest", decedent spent substantially all of his time there, except when he was at business during the day and when he was in New England on summer vacations or in Europe.

13. Decedent did not spend a night at Cinnaminson between November 14, 1925, and February 12, 1926. During

[fol. 757] the entire year 1926, decedent spent only eleven nights at Cinnaminson.

He spent January 10, 1927, and February 10, 1927, at Cinnaminson, and then during the seventeen month period beginning February 11, 1927, and ending July 16, 1928, he did not spend a single night at Cinnaminson. Thereafter, except when his family and all of the "Woodcrest" household servants were in New England on summer vacation, decedent, prior to his fatal illness, spent only eight nights at Cinnaminson. Continuously, from November 14, 1925, to the date of his fatal illness, decedent lived with his family at "Woodcrest".

14. At no time between November 14, 1925, and the date of his fatal illness in September 1930, did decedent and his family ever assemble at Cinnaminson, New Jersey, for any purpose, nor did decedent, at any time during that period reside with his family at Cinnaminson or any other place in New Jersey, or otherwise treat the Cinnaminson residence as his home and the home of his family.

15. During the period between November 14, 1925, and decedent's death, decedent's wife and family attended church at Radnor, his children attended school in Pennsylvania, a daughter was married at Radnor, and all social functions given by decedent and the members of his family, were at "Woodcrest", Radnor, Pennsylvania.

16. During said period, except when he was in Europe or his family was in New England for the summer, decedent spent his week-ends at "Woodcrest" with his family. Thanksgiving day, Christmas day, and all other holidays were celebrated by decedent and his family at "Woodcrest". Whenever decedent went to Europe he left from [fol. 758] and returned to "Woodcrest"; and when decedent's family went to New England for the summer vacation, its luggage was shipped from and returned to Radnor. In the summers of 1926 and 1927, "Woodcrest" was kept open while decedent's family was in New England, and decedent lived at "Woodcrest".

17. On June 30, 1928, decedent purchased additional ground adjoining "Woodcrest", consisting of 8.22 acres, at a cost of $52,500; and on July 27, 1929, another 10 acres at a cost of $60,000.

18. In August 1926, decedent's mother and sister, both of whom were ill, moved into "Pomona Farms", Cinnaminson, New Jersey, and lived there until they died—decedent's sister in the summer of 1928, and his mother early in 1929.

19. Prior to 1925, the cost per annum of operating "Pomona Farms" as the decedent's home, was between $20,000 and $30,000 per annum. After the decedent and his family moved to "Woodcrest", the cost of maintaining "Pomona Farms", even though decedent's mother and sister lived there while ill, became less each year. The expenditures for that purpose for 1927 were $10,344.29; for 1928, $8,373.89; for 1929, $6,459.90; and for the first nine months of 1930, $4,200.17. The cost of operating "Woodcrest" was more than $90,000 per annum for 1926 and 1927, and at the same rate per annum for the years 1928, 1929 and 1930, except in the summer when the household servants were taken to Bar Harbor.

20. Before the occupancy of "Woodcrest", ten servants were employed at "Pomona Farms"; but after November 14, 1925, never more than four. At "Woodcrest", the number of house servants was originally thirteen, but later sixteen; and in addition there were always ten to twelve outside employees.

[fol. 759] 21. In 1930, decedent and his family had been spending their summer vacation at Bar Harbor, Maine. All of the family servants were taken to Bar Harbor, and the family home at Radnor was not occupied during the summer. Decedent left Bar Harbor on September 15, 1930, and went to Cinnaminson, intending to stay there until the servants had arrived at "Woodcrest" and prepared it for occupancy. He suffered a stroke at Cinnaminson and died five days later. At the date of his death he was domiciled in Pennsylvania.

22. At the date of his death, and for some years prior thereto, decedent owned intangible personal property of the value of more than $100,000,000.

23. By his will, decedent required his executors to probate his will in New Jersey or forfeit their rights to serve as executors. Accordingly, the will was probated October

2, 1930, in the office of the Surrogate of Burlington County, New Jersey, and letters testamentary thereon were issued to plaintiffs.

24. On April 21, 1931, the Register of Wills of Delaware County, Pennsylvania, made an appraisement against the estate of decedent as a resident of said county, fixing the value of decedent's taxable personal property, including all of his intangible personal property, at $199,990,000, upon which the total transfer inheritance tax due to the Commonwealth was assessed at $31,465,200. Said appraisement was made under authority of the Pennsylvania Acts of June 20, 1919, P. L. 521, May 7, 1927, P. L. 859, and May 16, 1929, P. L. 1782. On May 2, 1931, plaintiffs through their counsel notified defendant Kelly, State Supervisor, Inheritance Tax Bureau, State of New Jersey, of the Pennsylvania assessment, and suggested that the State of New Jersey should intervene in the proceedings in Pennsylvania, and be represented therein.

[fol. 760] 25. On May 18, 1931, plaintiffs appealed from the assessment made by the Register of Wills of Delaware County, Pennsylvania, to the Orphans Court of Delaware County, Pennsylvania, and perfected their appeal by filing their bond in the amount fixed by the Court, conditioned for the payment of any tax which might be found due and payable.

26. On October 19, 1931, the Orphans Court of Delaware County, Pennsylvania, proceeded to take testimony on the appeal from the assessment made by the Register of Wills of that County, as aforesaid. Among the witnesses who testified, was defendant Kelly. On February 15, 1932, the Orphans Court sustained the appeal and set aside the assessment.

27. From the decision of the Orphans Court of Delaware County, the Commonwealth of Pennsylvania took an appeal to the Supreme Court of Pennsylvania; and the latter court on September 26, 1932, holding that decedent was domiciled in Pennsylvania on the date of his death, reversed the Orphans Court of Delaware County and reinstated, in a modified amount, the assessment made by the Register of Wills.

28. Plaintiffs filed a petition in the Supreme Court of the United States for a writ of certiorari to the Supreme

Court of Pennsylvania, which was denied on December 5, 1932, because a federal question was not properly presented to, and was not passed upon by the Supreme Court of Pennsylvania. Thereafter plaintiffs applied to the Supreme Court of Pennsylvania for a re-argument upon which they filed a brief presenting the federal question, and after that court's refusal to reconsider its decision, filed a second petition in the Supreme Court of the United States for a writ of certiorari, which was refused on March 13, 1933.

29. While plaintiffs' petition to the United States Supreme Court for a writ of certiorari was pending, the State [fol. 761] of New Jersey asked leave of that court to intervene, and plaintiffs filed their formal consent to such intervention; but leave was denied. However, leave was granted to the State of New Jersey to file a brief as amicus curiæ; and on November 23, 1932, the Attorney General of New Jersey filed a brief pursuant to the leave granted.

30. On March 27, 1933, the Supreme Court of Pennsylvania entered judgment in the aforesaid case in favor of the Commonwealth of Pennsylvania and against the plaintiffs for transfer inheritance tax in the amount of $14,394,698.88, subject to an additional assessment and imposition of tax if and when the final determination of the amount of the Federal estate tax upon decedent's estate should disclose that 80 per centum thereof exceeds $14,394,698.88. The judgment included a tax upon the transfer of all of decedent's intangible personal property.

On March 29, 1933, a like judgment was entered against the plaintiffs in the Orphans Court of Delaware County, Pennsylvania, which judgment was final and conclusive upon the plaintiffs.

31. Because of said judgment, plaintiffs were compelled to pay to the Commonwealth of Pennsylvania transfer inheritance tax in the amount of $14,394,698.88, with interest amounting to $104,278.03. They made payment on March 31, 1933. On the same date they gave their bond to the Commonwealth of Pennsylvania in the amount of $4,000,000, conditioned upon the payment of any additional tax which might become due under the said judgment.

32. On October 17, 1931, the State Tax Commissioner of New Jersey, purporting to act under authority conferred upon him by the New Jersey Transfer Inheritance Tax Act

of April 20, 1909, ch. 228, its amendments and supplements, [fol. 762] made an assessment of transfer inheritance tax against decedent's estate in the sum of $12,247,333.52, with an additional assessment in the sum of $4,521,143.90 on account of certain contingent remainders. Said assessment included tax upon the transfer of all of decedent's intangible personal property.

33. Pending the decision of the Orphans Court of Delaware County, Pennsylvania, the defendant State Tax Commissioner of New Jersey on December 12, 1931, opened the assessments made by him on October 17, 1931, as aforesaid, for the purpose of permitting plaintiffs to submit to him additional information regarding decedent's domicile.

34. On October 10, 1932, after the entire record in the Pennsylvania case, including the judgment of the Supreme Court of Pennsylvania, was offered in evidence before him, without objection on the part of the defendants or any of them, defendant, the State Tax Commissioner of New Jersey, made an assessment of transfer inheritance tax against the decedent's estate in the amount of $12,247,333.52, with interest at the rate of 10 per cent per annum from September 21, 1931. The Pennsylvania judgment established that decedent was domiciled in Pennsylvania at the time of his death. Said assessment included tax upon the transfer of certain of decedent's tangible personal property and upon all of decedent's intangible personal property.

35. On December 9, 1932, plaintiffs appealed from the New Jersey assessment of transfer inheritance tax to the Ordinary of the State of New Jersey; and after hearing the appeal the Ordinary entered a decree in the New Jersey Prerogative Court on May 11, 1934, sustaining the Tax Commissioner's assessment of October 10, 1932. In its decree [fol. 763] the said court refused to give full faith and credit to the judgment of the Supreme Court of Pennsylvania, and, upon the same evidence, stated conclusions at variance with those of the Supreme Court of Pennsylvania.

36. From the decree of the Prerogative Court, plaintiffs obtained a writ of certiorari from the Supreme Court of the State of New Jersey, which on February 11, 1935, sustained the decree of the Prerogative Court. The action of the Supreme Court is not final, being subject to judicial review by the Court of Errors and Appeals. And the tax

which defendants demand cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or a statutory proceeding in the Prerogative Court of New Jersey.

37. When the defendant Martin, State Tax Commissioner, made his assessment of $12,247,333.52 against the plaintiffs, and when the assessment had been sustained by the Prerogative Court, the administrative procedure provided by the New Jersey Inheritance Tax Act of April 20, 1909, ch. 228, was at an end; but under the Constitution and laws of New Jersey, the Supreme Court of New Jersey on certiorari is authorized to review the facts as well as the law, to take additional testimony and to affirm, reverse or modify the assessment made by the State Tax Commissioner, thus rendering the action of that court administrative and not judicial.

38. Defendants threaten to collect from plaintiffs the transfer inheritance tax assessed against decedent's estate by the defendant State Tax Commissioner. The assessment includes a tax on the intangible personal property of decedent's estate, and is unconstitutional for the reasons set forth in this Bill of Complaint.

[fol. 764] 39. By the New Jersey Act of July 11, 1934, Ch. 249, the State Tax Commissioner was authorized "to adjust and settle transfer inheritance taxes due the State, where the matter is now in litigation and the question of the domicile of decedent is at issue and has been adjudged against the estate of decedent both in this State and in another State, by the acceptance of the principal sum due and the remission of all interest due on such principal sum."

40. On February 13, 1935, plaintiffs by their counsel notified defendant Martin through his counsel, that plaintiffs intend to take an appeal to the New Jersey Court of Errors and Appeals from the action of the Supreme Court of New Jersey. On February 15, 1935, defendant Martin addressed to plaintiffs a letter, a copy of which marked "Exhibit A" is attached hereto and made a part hereof, notifying them of his intention to refuse any relief in interest charges to decedent's estate, if plaintiffs prosecuted any further, in the courts of New Jersey, litigation contesting the validity of the tax defendants threaten to collect. Thus, an appeal by plaintiffs from the judgment of the Supreme

Court of New Jersey to the Court of Errors and Appeals, will cost decedent's estate upwards of $4,000,000, if the assessment against decedent's estate should be sustained. Under the statutes of New Jersey, plaintiffs may take their appeal to the Court of Errors and Appeals at any time prior to February 11, 1936. Plaintiffs will take such appeal prior to that date, unless in the meantime this action renders such appeal unnecessary.

41. On April 25, 1933, after the Supreme Court of Pennsylvania had held that decedent was domiciled in Pennsylvania, plaintiffs filed before the Surrogate of Burlington County, New Jersey, a petition praying him to revoke his [fol. 765] order of October 2, 1930, admitting the will of John T. Dorrance to probate, and granting letters testamentary to plaintiffs. No action has as yet been taken on that petition.

42. On May 12, 1933, defendant Martin, State Tax Commissioner of the State of New Jersey, filed in the Burlington County Orphans Court, of Burlington County, New Jersey, a petition praying the court to remove plaintiffs as executors and trustees under decedent's will and to appoint in their stead the State Treasurer of New Jersey. No action has as yet been taken on that petition.

43. Because of defendants' threat to collect from decedent's estate, a transfer inheritance tax, as aforesaid, plaintiffs are compelled to maintain a large cash reserve at a low rate of interest, and have been and are being prevented from selling, pledging, transferring, or otherwise utilizing personal property of decedent's estate of the appraised value of more than $81,000,000, as appears more fully by a statement of the following facts:

On July 1, 1933, New Jersey State road bonds belonging to decedent's estate in the amount of $1,665,000, matured. Defendant Martin, State Tax Commissioner of New Jersey, and defendant Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey, refused to issue waivers to plaintiffs releasing the maturing bonds, unless and until plaintiffs placed in escrow other New Jersey bonds of an equal par value, conditioned upon the payment of inheritance tax by plaintiffs, if such tax be found due and owing. Thereupon plaintiffs placed in escrow other New

Jersey bonds of the par value of $1,665,000, appraised at $1,738,360.

On June 26, 1934, in order to avoid, for the time being, the posting of a bond in the amount of upwards of $24,-
[fol. 766] 000,000, plaintiffs placed in escrow, conditioned upon the payment of inheritance tax by plaintiffs if such tax be found due and owing, all of the preferred stock of Campbell Soup Company, of the appraised value of $12,-360,000.

Plaintiffs hold, in addition, personal property belonging to decedent's estate of the appraised value of more than $67,000,000, which cannot be sold, pledged, transferred or otherwise utilized unless and until waivers have been issued by the State Tax Commissioner of New Jersey and the State Supervisor, Inheritance Tax Bureau, of the State of New Jersey. Said officers have refused to issue such waivers.

44. Notwithstanding the deposit of collateral, as aforesaid, plaintiffs are confronted by a possible demand by the defendants, that plaintiffs give bond conditioned upon the payment of the transfer inheritance tax claimed by defendants, in an amount exceeding $24,000,000, as required by the New Jersey Act of April 20, 1909, ch. 228, as amended. It is extremely doubtful whether a bond in this amount could be obtained, but if it could be obtained, plaintiffs would be obliged to pay a premium thereon in a large amount, which would not be recoverable by plaintiffs from defendants or from the State of New Jersey in any court by any process.

45. The threat of defendants to collect from decedent's estate the aforesaid tax of more than $12,000,000 with interest and penalties, renders impossible the proper administration and distribution of decedent's estate.

46. Further prosecution of the litigation between plaintiffs and the defendant Martin in the courts of New Jersey, will also require decedent's estate to pay attorney's fees and other expenses of litigation which will not be re-
[fol. 767] coverable by plaintiffs from the defendants or from the State of New Jersey, should this proceeding be postponed until the determination by the highest court of New Jersey, of the issues involved in said litigation.

47. The New Jersey Inheritance Tax Act of 1909 purports to impose upon all of the property of decedent's estate a lien for the payment of the tax which defendants threaten to collect, thus rendering it impossible for plaintiffs to transfer any of said property free and clear of a claimed encumbrance, unless the plaintiffs post a bond at irreparable damage to decedent's estate, as heretofore set forth. Said claimed lien constitutes a cloud upon the title to all of the property belonging to decedent's estate.

48. Were the plaintiffs to pay the tax which defendants threaten to collect from decedent's estate, it would be the duty of the defendant Martin, State Tax Commissioner, forthwith to pay the same into the State Treasury, and the duty of defendant Albright, State Treasurer of the State of New Jersey, thereupon to apply $10,000,000 of said tax to the redemption of bonds issued under authority of the New Jersey Act of September 19, 1934, ch. 255, and the subsequent sanction of the electors of the State of New Jersey.

49. The State of New Jersey has not consented to be sued in the courts of the United States for the recovery of inheritance tax erroneously paid by plaintiffs or illegally collected by defendants.

50. Were plaintiffs to pay the tax which defendants threaten to collect from decedent's estate, even if plaintiffs could obtain a judgment against defendants individually for illegally collecting and receiving said tax, defendants [fol. 768] would be financially unable to respond to such judgment; and defendants' official bonds do not enure to the benefit of plaintiffs and in addition would be grossly inadequate to assure the payment of the amount of the tax claimed, even if plaintiffs could recover upon such bonds.

51. Were the plaintiffs to pay the tax which the defendants threaten to collect, their only recourse thereafter would be an application for refund under Section 15 of the New Jersey Act of April 20, 1909, ch. 228, which permits (but does not compel) the Comptroller of New Jersey to draw his warrant on the State Treasurer in favor of executors who have "erroneously" paid transfer inheritance tax to the State Tax Commissioner. However, there is no provision made for the payment of interest for the

time that the money has been in the State Treasury, there is no appeal from the refusal of the Comptroller to grant a refund, and a warrant would not result in the immediate payment of the refund for the reason that the available balances in the State Treasury would not enable a refund in the amount of the tax which defendants threaten to collect, to be made until after the lapse of a substantial period of time, if at all.

52. Inheritance taxes can be collected upon the transfer of intangible personal property from a decedent only by the State in which the decedent was domiciled at the date of his death; and any collection of such taxes by any other State is a taking of property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States.

53. If the New Jersey Act of April 20, 1909, ch. 228, authorizes defendants to collect transfer inheritance tax upon the transfer of intangible personal property of a [fol. 769] decedent, who prior to his death had established his dwelling place and family home in another state, without any present intention of not residing there indefinitely, it is unconstitutional in that it deprives the plaintiffs of their property without due process of law and denies to the plaintiffs the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

54. If said statute authorizes defendants to collect transfer inheritance tax upon the transfer of intangible personal property of the estate of John T. Dorrance, deceased, under the circumstances heretofore in this bill of complaint set forth, it is unconstitutional in that it deprives plaintiffs of their property without due process of law and denies to them the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United Sates.

55. If said statute be construed as not applying to property of a decedent, who prior to his death had established his dwelling place and family home in another state, without any present intention of not residing there indefinitely, then the threatened collection by the defendants of said inheritance tax unconstitutionally deprives the plaintiffs

of their property without due process of law and denies to the plaintiffs the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

56. Plaintiffs are entitled to raise in this Court the question whether the New Jersey Act of April 20, 1909, ch. 228, as interpreted by the defendants, violates the Constitution of the United States.

57. Plaintiffs have a right to have this Court determine the facts necessary to a consideration of the constitutional [fol. 770] questions raised by this bill of complaint.

58. The threatened collection by defendants of transfer inheritance tax upon the intangible personal property of decedent is repugnant to the provisions of Article IV, Section 1 of the Constitution of the United States in that defendants fail to give full faith and credit as required by said Constitution to the judgment of the Supreme Court of Pennsylvania adjudging decedent to have been domiciled in Pennsylvania on the date of his death.

59. For the reasons heretofore in this bill of complaint set forth, plaintiffs are threatened with irreparable injury unless this court grants equitable relief as prayed.

60. For the reasons heretofore in this bill of complaint set forth, plaintiffs are without an adequate remedy at law.

Wherefore, plaintiffs are in need of equitable relief and pray:

A. That an injunction issue, temporary until hearing and perpetual thereafter, enjoining and restraining the defendants, J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, William D. Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey, Frank J. Murray, Comptroller of the State of New Jersey, William H. Albright, State Treasurer of the State of New Jersey, and David T. Wilentz, Attorney General of the State of New Jersey, and their and each of their deputies, officers, agents, servants and employees, acting under and by virtue of their authority, from in any way collecting or attempting to collect inheritance tax from the plaintiffs on the transfer of decedent's intangible personal property

[fol. 771] in the estate of John T. Dorrance, deceased, now being undertaken, from refusing to issue tax waivers to the plaintiffs covering the intangible personal property of said decedent's estate, and from refusing to release from escrow the personal property belonging to said decedent's estate now held in escrow subject to the control of the defendants or any of them.

B. That such other and further relief be granted as to your Honorable Court shall seem meet.

And the plaintiffs will ever pray, etc.

John Milton, Solicitor for and of Counsel with Plaintiffs. William A. Schnader, 1719 Packard Building, Philadelphia, Pa., of Counsel.

[fol. 772] EXHIBIT "A" TO AMENDED BILL OF COMPLAINT

Form 0-12-40M-8-34.

State of New Jersey

State Tax Department

Transfer Inheritance Tax Bureau

Trenton, February 15, 1935

Address all communications: c/o Transfer Inheritance Tax Bureau.

William D. Lippincott, Esquire, Proctor for the Executors of the Estate of John T. Dorrance, Deceased, 35 North Fourth Street, Camden, N. J.

DEAR SIR:

As you know the New Jersey Prerogative Court by a finad decree dated May 11, 1934, affirmed a transfer inheritance tax assessment on the estate of John T. Dorrance, deceased, made by the State Tax Commissioner, dated October 10, 1932, amounting to $12,247,333.52, subject to certain modifications. You know also that on February 8, 1935 the New Jersey Supreme Court sustained the decree of the Prerogative Court. The following statements

shows the amount of the claim due and payable as of February 15, 1935:

Amount of tax assessment as modified by decree	$12,183,459.96
Interest thereon from Sept. 21, 1931 to Feb. 15, 1935	4,145,713.70
Total amount of tax with interest presently due and payable	$16,329,173.66

[fol. 773] You are undoubtedly also aware of the fact that by the provisions of Chapter 249, Laws of New Jersey 1934, which became effective the 11th day of July 1934, the State Tax Commissioner was authorized to adjust and settle transfer inheritance taxes due this State in certain cases by the acceptance of the principal sum due and the remission of all interest due on such principal sum. You are also undoubtedly aware of the fact that this legislation was intended to permit a settlement of the taxes assessed in this estate.

To date you have made no overtures of settlement to me, but instead have indicated your intention to prosecute the litigation to a finality. In view of this attitude on your part, I deem it only proper to advise you that any further prosecution of the litigation by you will cause me to refuse any relief in interest charges should the litigation finally result in an affirmance of the assessment.

Very respectfully, (Sgd.) J. H. Thayer Martin, J. H. Thayer Martin, State Tax Commissioner.

[fol. 774-776] *Duly sworn to by E. Merrill Schlosser. Jurat omitted in printing.*

[fols. 777 & 778] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity

No. 5091

[Title omitted]

ANSWER—Filed April 12, 1935

The joint and several answer of the defendants, J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey; William D. Kelly, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey; Frank J. Murray, Comptroller of the State of New Jersey; William H. Albright, State Treasurer of the State of New Jersey; and David T. Wilentz, Attorney [fol. 779] General of the State of New Jersey.

These defendants, for answer to the bill of complaint, say:

1. Paragraph 1 is admitted; except that defendants, further answering said paragraph, say:

(a) They pray reference to the original or to a certified copy of said will for certainty as to the terms thereof and as to the powers and duties of the executors therein named.

(b) They pray reference to the original or to a certified copy of the petition for probate of said will and the other proceedings relating to the probate thereof for certainty as to the authority of the plaintiffs to act as the executors thereof.

(c) Said will was admitted to probate by the Surrogate of Burlington County, New Jersey, and letters testamentary thereon were issued to the plaintiffs, in accordance with the provisions of the statutes and other laws of the State of New Jersey that application for the probate of the will of any person who was resident in this state at his decease, and for letters testamentary thereon, should be made to the surrogate of the county in which the testator resided at the time of his death; the plaintiffs thereupon assumed the burden of the duties of executors of said will, and ever

since the letters testamentary thereon were issued to the plaintiffs, and continuously to the present time, they have been and they now are acting as such executors, pursuant to said statutes and other laws.

(d) Said corporate plaintiff is a citizen and resident of the State of New Jersey; said individual plaintiffs are citizens and residents of the State of New Jersey as well as of the United States.

[fol. 780] 2. Paragraph 2 is admitted; except that defendants, further answering said paragraph, say:

(a) The said defendants, and each of them, are citizens of the State of New Jersey as well as of the United States.

(b) Said defendants, and each of them, respectively, are clothed, under the laws of the State of New Jersey, with the following duties in the assessment and collection of transfer inheritance taxes;—

Defendant, J. H. Thayer Martin, is the chief officer of the State Tax Department of the State of New Jersey; said Department was established by Chapter 336, page 823, New Jersey Laws of 1931, wherein and whereby the chief officer of said Department, was denominated as the "State Tax Commissioner"; all transfer inheritance taxes imposed by the statutes of the State of New Jersey are to be paid to said defendant as the State Tax Commissioner and deposited with the Treasurer of the State of New Jersey when and as collected, for the use of said state.

Under said statutes it is the duty of said defendant as State Tax Commissioner to fix the amount of the taxes to be imposed at the rates specified in said statutes, upon the clear market value of the property; and to assess and fix the cash value of the estates of decedents and to levy the tax to which the same is liable and to give notice thereof, by mail, to all parties interested therein.

It is also the duty of the State Tax Commissioner, on satisfactory proof rendered to said Commissioner, to certify to the Comptroller of the Treasury the amount of any tax that shall have been paid erroneously to said Commissioner, provided that application for repayment thereof be made within two years from the date of such payment. [fol. 781] It is also the duty of the State Tax Commissioner, when it shall appear to him that any tax which has accrued under the Transfer Inheritance Tax Act has not

been paid according to law, to report such fact, in writing, to the register of the Prerogative Court, for further action by said register, and by the ordinary of said Court, as specified in said act.

It is also the duty of the State Tax Commissioner, whenever he shall have reason to believe that any tax is due and unpaid under said act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, to notify the Attorney General of the State of New Jersey, in writing, of such failure to pay such tax, for further action by the Attorney General, as specified in said act, and to perform various other duties, as set forth in detail in said act.

Defendant, William D. Kelly, is the state supervisor of the Inheritance Tax Bureau of the State Tax Department; this is not a statutory office, and the statutes of the State of New Jersey do not confer upon him any powers or duties respecting the assessment or collection of transfer inheritance taxes. He is an employee of the State Tax Department and performs such duties therein as may be, from time to time, assigned to him by the State Tax Commissioner.

Defendants, Frank J. Murray and William H. Albright, are not charged with any powers or duties respecting the assessment or collection of transfer inheritance taxes.

Defendant, David T. Wilentz, is the Attorney General of the State of New Jersey; under the statutes of said state relating to transfer inheritance taxes, it is the duty of said defendant, when notified, in writing, by the State Tax Commissioner, of any failure to pay such tax, to prosecute the proceedings before the Ordinary for the collection thereof as prescribed in Section 21 of said Act.

[fol. 782] 3. They admit that the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000; they deny that the matter in controversy arises under the Constitution of the United States.

4. Paragraph 4 is admitted.

5. Paragraph 5 is denied; except that defendants admit that decedent was married on August 18, 1906, and that he lived with his wife in Camden, New Jersey, until the latter part of the year 1907; they say that he and his wife then temporarily resided with his brother, George Morris

Dorrance, M. D., in Philadelphia, Pennsylvania, during certain parts of the year, and from June 1st to October 1st of each year, from the year 1907 to 1911, inclusive, decedent and his wife lived in the City of Atlantic City, New Jersey, and in 1911 they established their permanent home at Cinnaminson, Burlington County, New Jersey, on property known as "Pomona Farms" owned by and leased from Campbell Soup Company, of which decedent, during most of that time, was president and owner of the entire capital stock; that in the year 1896, decedent became domiciled in the State of New Jersey and continued so domiciled in said state until the time of his death; from 1836 until 1911 his domicile was in the County of Camden, and from 1911 until his death his domicile was in the County of Burlington, in said state.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 8.

9. Paragraph 9 is denied.

10. They admit that on November 14, 1925, decedent was physically present at Radnor, Pennsylvania; they deny that on that date, or at any time thereafter, decedent was [fol. 783] present at his new dwelling place at Radnor, Pennsylvania, with the intention of making the same his home, and without any present intention of not residing there indefinitely.

11. They deny paragraph 11; except that they admit that the decedent continued to lease from Campbell Soup Company, "Pomona Farms" at Cinnaminson, New Jersey, and that he continued to vote and pay personal property taxes at Cinnaminson, New Jersey; that he retained his membership in the vestry of a church at Riverton, New Jersey; that he made many declarations, including statements in his will, that he was a resident of the State of New Jersey; and that subsequent to decedent's death plaintiffs paid personal property taxes in an amount unknown to defendants, to Delaware County, Pennsylvania, for the years 1925 to 1930, inclusive; said statements in his will are as follows:

"I, John T. Dorrance, of the Township of Cinnaminson, in the County of Burlington and State of New Jersey, being of sound and disposing mind, memory and understanding, do make and publish this, my last will and testament, hereby revoking any and all will or wills heretofore by me at any time made."

"Seventh: I give and bequeath unto my wife, Ethel M. Dorrance, all my clothing, and all of my furniture and furnishings and household goods and household effect of every kind and description whatsoever, including silverware, china and glassware, rugs and pictures which I shall own at the time of my decease, excepting my grandfather's clock above bequeathed and excepting all tapestries; all of the furnishings and furniture and household goods and household effect of every kind and description, now used by my wife and myself in the house where I now reside in Cinnaminson Township, Burlington County, New Jersey, and elsewhere, excepting my grandfather's clock above be- [fol. 784] queathed and excepting all tapestries, being the property of my said wife, Ethel M. Dorrance."

"Thirty-Third: I hereby order and direct that if my said wife, Ethel M. Dorrance, or my said brother, George Morris Dorrance, M. D., or my said brother, Arthur C. Dorrance, or said Camden Safe Deposit and Trust Company, Executors of this, my last will and testament, or any of them shall fail or refuse to make application to the Surrogate of the County of Burlington, or to the Ordinary of the State of New Jersey, for the probate of my last will and testament within thirty days after the date of my decease, then such one or more of my said Executors so failing or refusing to make application to the said Surrogate or to the said Ordinary for the probate of my said last will and testament within thirty days after the date of my decease, shall cease to be such Executor or Executors and Trustee or Trustees, and the appointment in my said last will and testament of such one or more of my said Executors primarily nominated and appointed in and by this, my last will and testament, who shall fail or refuse to make application to the said Surrogate or to the said Ordinary for the probate of my said last will and testament within thirty days after the date of my decease, shall cease

and determine and be void and of no effect and as to such of my Executors primarily named in this, my last will and testament, as such Executors, as shall so fail or refuse to make application for the probate of this, my last will and testament, to the said Surrogate or to the said Ordinary within thirty days after my death, I revoke the appointment herein made as Executor or Executors and also as Trustee or Trustees."

12. Paragraph 12 is denied.

13. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 13; except that they deny that continuously from November 14, 1925, to the date of his fatal illness, decedent lived with his family at Woodcrest.

[fol. 785] 14. Paragraph 14 is denied.

15. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 15.

16. Paragraph 16 is denied.

17. Paragraph 17 is admitted.

18. Paragraph 18 is denied; except that defendants admit that in or about August, 1926, decedent's mother and sister came to live with decedent at his home in "Pomona Farms," Cinnaminson, New Jersey, and lived there until they died—decedent's sister, in the summer of 1928, and his mother, early in 1929.

19. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 19.

20. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 20.

21. Paragraph 21 is denied; except that defendants admit that in 1930 decedent and his family spent their summer vacation at Bar Harbor, Maine; and that decedent left Bar Harbor on September 15, 1930, and went to Cinnaminson, where he suffered a stroke a few days after arrival and died there five days later.

22. They admit that at the time of his death the decedent owned intangible personal property of the value of more than $100,000,000.00; they have no knowledge or informa-

tion sufficient to form a belief as to whether he owned intangible personal property of said value for some years prior to the date of his death.

23. They admit that by his will, decedent required his executors to probate his will in New Jersey or forfeit their rights to serve as executors; and they say that the said [fol. 786] provision of said will is Section Thirty-Third, quoted in full in paragraph 11 of this answer.

They admit that on October 2, 1930, said will was probated in the office of the Surrogate of Burlington County and that letters testamentary thereon were issued to plaintiffs; and they say that there is annexed hereto and made part hereof a copy of the proceedings before said Surrogate on the probate of said will, including the petition for probate and the affidavit of the executors thereto annexed; the qualifications of the executors, the order for probate and the letters testamentary.

24. Paragraph 24 is denied.

25. Paragraph 25 is admitted; except that they say that the appeal mentioned therein was not from any assessment against the estate of decedent but from an alleged appraisement thereof.

26. Paragraph 26 is admitted; except that they say that the appeal mentioned therein was not from any assessment against the estate of decedent but from an alleged appraisement thereof; and except that they say that the defendant, William D. Kelly, at the request of the attorneys for the plaintiffs, attended as a witness at the Orphans' Court of Delaware County, Pennsylvania, and identified an exemplified copy of the bill for the assessment of the New Jersey inheritance taxes upon the estate of the decedent, which was presented to said defendant by said attorneys for the purpose of identification by him and was offered by said attorneys as Exhibit "C."

27. Paragraph 27 is admitted; except the defendants say that the judgment of the Pennsylvania Supreme Court was as follows:

"The decree of the court below is reversed and the appraisement, subject to modifications indicated by the Com- [fol. 787] monwealth stipulation as to the value of the estate, is reinstated; the cost to be paid by appellees."

28. Paragraph 28 is admitted; except that defendants, further answering said paragraph, say that the reasons for the refusal of the Supreme Court of Pennsylvania for a reargument are set forth in the opinion of that court as follows:

"A general reargument of this case was not granted. Reargument was allowed under Rule 84, solely to permit the appellee-executors formally to bring to the attention of this Court the fact that they had filed an amended petition in the court of first instance suggesting a question or questions under the due process clause of the Fourteenth Amendment. On the appeal to this Court, no reference to the matter was made in the arguments though provision therefor is expressly made in Rule 47. The executors now urge that we pass on those questions, suggested in the court of first instance, and reconsider the appeal on a theory not presented when the case was argued here. The Commonwealth objects to such reconsideration, contending that 'They (the executors) deliberately elected to argue the case as one arising under the law of Pennsylvania.'

At the time that this Court decided the question of fact,—in its judgment, a matter for decision according to the law of Pennsylvania,—it was held, for the reasons stated in the opinion filed, that John T. Dorrance was domiciled in Pennsylvania. As no federal question was involved, or presented by the records or briefs or in the oral argument for consideration in the decision of the basic matter of fact, none was considered or decided and none remains for decision.

No reason appears for modifying the decision originally made.

Justices Schaffer and Drew dissent from this order."

[fol. 788] 29. Paragraph 29 is admitted; except that the defendants, further answering said paragraph, say that said petition and brief were filed at the request, and with the knowledge, consent and approval of the plaintiffs.

30. Paragraph 30 is admitted; except that the defendants, further answering said paragraph, say that none of the defendants, nor the State of New Jersey, nor any officer of said state, was a party to the suit in which said judgments were entered and neither of said judgments was ever sued upon or established in any court of New Jersey or of the United States; and neither of said judgments is

binding upon these defendants or upon the State of New Jersey.

31. They admit that plaintiffs paid to the Commonwealth of Pennsylvania transfer inheritance tax in the amount of $14,394,698.88, with interest, and that said payment was made on March 31, 1933; they deny that the plaintiffs were compelled to pay the same, because of said judgment or otherwise; they have no knowledge or information sufficient to form a belief as to whether on March 31, 1933, plaintiffs gave bond to the Commonwealth of Pennsylvania in the amount of $4,000,000, conditioned upon the payment of any additional tax which might become due under said judgment; they say if any such bond was given, it was given voluntarily by the plaintiffs and not by the compulsion of said judgment.

32. Paragraph 32 is admitted; except that defendants, further answering said paragraph, say that the said assessments were made by the defendant, J. H. Thayer Martin, as State Tax Commissioner of New Jersey, upon proofs and documents submitted on behalf of plaintiffs, including an inheritance tax return and an amended inheritance tax return signed and sworn to by one of the plaintiffs, namely Camden Safe Deposit and Trust Company, on behalf of [fol. 789] all of the plaintiffs wherein and whereby the plaintiffs alleged and swore that the said decedent was "late of Burlington County"—referring to Burlington County, New Jersey.

33. Paragraph 33 is admitted; except that defendants, further answering said paragraph, say that the defendant, J. H. Thayer Martin, as State Tax Commissioner of the State of New Jersey, opened the said assessments on the petition of the plaintiffs, requesting him so to do.

34. Paragraph 34 is admitted; except that they deny that the Pennsylvania judgment therein mentioned established as against the defendants or against the State of New Jersey that the decedent was domiciled in Pennsylvania at the time of his death.

35. They admit that on December 9, 1932, plaintiffs appealed from the New Jersey assessment of transfer inheritance tax to the Ordinary of the State of New Jersey; and that after hearing the appeal the Ordinary entered a decree

in the New Jersey Prerogative Court on May 11, 1934, sustaining the Tax Commissioner's assessment of October 10, 1932, except in certain respects immaterial to the present issues; and therein and thereby said court ordered, adjudged and decreed that the assessment of transfer inheritance taxes, as made by the said Tax Commissioner on October 10, 1932, amounting to $12,247,333.52 upon the transfer of the property of the decedent, as that of a resident decedent, be affirmed; said decree was based upon conclusions and supplemental conclusions of the said Ordinary; copies of said decree, conclusions and supplemental conclusions are annexed hereto and made part hereof.

They deny that in said decree said court refused to give full faith and credit to the judgment of the Supreme Court of Pennsylvania; and they deny that said court upon the [fol. 790] same evidence stated conclusions at variance with those of the Supreme Court of Pennsylvania.

36. Paragraph 36 is admitted; further answering said paragraph they say that copies of the decision of the Supreme Court and of the judgment of said court, are hereto annexed and made part hereof.

37. Paragraph 37 is denied; further answering said paragraph the defendants say that the administrative procedure provided by the New Jersey statutes therein mentioned was at an end at the time the State Tax Commissioner of New Jersey completed his assessment of the transfer inheritance tax against the estate of the decedent on October 10, 1932.

38. Paragraph 38 is denied; except that they admit that said assessment includes a tax on the intangible personal property of decedent's estate.

39. Paragraph 39 is admitted.

40. Paragraph 40 is denied.

Paragraph 41 is admitted.

42. Paragraph 42 is admitted.

43. They deny that because of the threat of the defendants to collect from the estate of decedent a transfer inheritance tax, the plaintiffs are compelled to maintain a large cash reserve at a low rate of interest; they deny that by reason thereof the plaintiffs have been and are being pre-

vented from selling, pledging, transferring, or otherwise utilizing personal property of decedent's estate of the appraised value of more than $81,000,000.

They admit the allegations of said paragraph relating to the maturity of New Jersey State Road Bonds and the substitution therefor of other New Jersey bonds. Said [fol. 791] substitution of bonds was made pursuant to an agreement dated November 10, 1933, between the plaintiffs and the defendants' State Tax Commissioner, a copy of which is annexed hereto and made part hereof.

They admit that on June 26, 1934, the plaintiffs placed in escrow all the preferred stock of Campbell Soup Company of the appraised value of $12,360,000, conditioned upon the payment of inheritance tax by the plaintiffs, if such tax be found due and owing; and further answering said allegations they say that said stock was placed in escrow in accordance with and pursuant to an agreement, of which copy is annexed and made part hereof; which said deposit of stock was made (in lieu of giving bond) pursuant to the direction of the New Jersey Supreme Court as a condition precedent to the issuance of a writ of certiorari.

They admit that the plaintiffs held, in addition, personal property belonging to the estate of decedent of the appraised value of more than $67,000,000; they admit that the same cannot be sold, pledged, transferred, or otherwise utilized, unless and until waivers have been issued by the State Tax Commissioner of the State of New Jersey; further answering said allegations they say that if and when the plaintiffs desire to sell, pledge, transfer, or otherwise utilize said personal property they may do so by giving bonds or other security for the payment of the judgment for taxes or by substituting other satisfactory securities; and the only securities which the plaintiffs have given for these taxes or that has been required, pending the litigation, is the deposit of said bonds and stock in escrow under the terms of said agreements; and further answering said allegations they say that the plaintiffs have not requested the State Tax Commissioner to issue waivers on said personal property or any part thereof.

[fol. 792] Further answering said paragraph defendants say that said personal property belongs to a trust fund set up by the decedent's will which trust is now being administered by the plaintiffs as trustees, and is to continue for

a period of not exceeding 16 years; that said plaintiffs have no power or authority to sell, pledge, transfer or otherwise utilize said personal property, except at the terms and in the manner prescribed in said will.

44. Paragraph 44 is denied.

45. Paragraph 45 is denied.

46. They have no knowledge or information sufficient to form a belief as to the allegations of paragraph 46; and further answering said paragraph they say that provision is made by the statutes of New Jersey for the deduction of expenses of administration, including attorney's fees.

47. Paragraph 47 is denied.

48. Paragraph 48 is denied; except that they say that said Chapter 255, New Jersey Laws of 1934, insofar as relates to the redemption of the bonds issued under its authority, provides as follows:

"14. To provide funds to meet the interest and principal payment requirements for any bonds issued under this act and so long as any bonds issued hereunder shall be outstanding and unpaid there is hereby appropriated and the Treasurer shall in each year set aside for such purpose, sufficient sums to meet the principal and interest requirements for the next ensuing calendar year from the tax collected under and by virtue of the provisions of an act entitled 'An act imposing taxes upon the sale or delivery of alcoholic beverages and providing for the collection thereof,' approved December fourth, one thousand nine hundred and thirty-three, constituting chapter four hundred thirty-four of the laws of one thousand nine hundred [fol. 793] and thirty-three and the several acts amendatory thereof or supplemental thereto, and under and by virtue of any revision thereof or act substitutionary thereof after deducting only the expenses of administering said act or acts.

15. In the event of the receipt by the State of moneys from one of the following sources: (1) the moneys received by the State under the final judgment or decree, whether in the original cause or appeal, of any court of competent jurisdiction in any cause now pending for the collection of transfer inheritance taxes due the State from the estate of a decedent adjudged in said cause to have been a resi-

dent of this State, which decedent has already been adjudged by the courts of another State to have been a resident of such other State (2) the moneys received in any such cause in the event of the settlement of such litigation by the State Tax Commissioner by the acceptance of the principal sum due and the remission of all interest due on all such principal sum in accordance with the provisions of an act entitled 'An act authorizing the State Tax Commissioner to adjust and settle transfer inheritance taxes due the State, where the matter is now in litigation and the question of the domicile of decedent is at issue,' approved July eleventh, one thousand nine hundred and thirty-four, constituting chapter two hundred and forty-nine of the laws of one thousand nine hundred and thirty-four, (3) or an agreed amount to be determined by the Legislature, the Treasurer may apply all or any part of such moneys to the redemption and payment of any bonds (together with interest thereon to date of redemption) theretofore issued and then outstanding under this act.

16. (a) If in any year or at any time funds as hereinabove appropriated necessary to meet interest and principal payments upon outstanding bonds issued under this act be insufficient or are not available, then and in that case there shall be assessed, levied and collected annually in each of the municipalities of the counties of this State a tax on [fol. 794] real and personal property upon which municipal taxes are or shall be assessed, levied and collected, sufficient to meet the interest on all outstanding bonds issued hereunder and on such bonds as it is proposed to issue under this act in the calendar year in which such tax is to be raised and for the payment of bonds falling due in the year following the year for which the tax is levied.

(b) The tax thus imposed shall be assessed levied and collected in the same manner and at the same time as other taxes upon real and personal property are assessed, levied and collected. The governing body of each municipality shall cause to be paid to the county treasurer of the county in which such municipality is located on or before the fifteenth day of December in each year the amount of tax herein directed to be assessed and levied, and the county treasurer shall pay the amount of said tax to the State Treasurer on or before the twentieth day of December in each year."

49. Paragraph 49 is admitted; except that they say that the State of New Jersey, by its statutes and other laws, has provided full, complete and adequate remedy to the plaintiffs for the recovery of inheritance tax erroneously paid by plaintiffs, or illegally collected by defendants. The pertinent parts of said statutes, are as follows:

(Transfer Inheritance Tax Act)

"15. When any amount of said tax shall have been paid erroneously to the State Tax Commissioner, it shall be lawful for the Comptroller of the Treasury on satisfactory proof rendered to State Tax Commissioner of such erroneous payments, and duly certified by him to the Comptroller, to draw his warrant on the State Treasurer, in favor of the executor, administrator, person or persons who have paid any such tax in error, or who may be lawfully entitled to receive the same, for the amount of such tax so paid in error; provided, that all such applications [fol. 795] for the repayment of such tax shall be made within two years from the date of such payment."

(Ch. 303, N. J. P. L. 1931, pp. 749, 762.)

"24. * * * All amounts becoming due under the provisions of this act shall be paid from the same fund provided in the annual appropriation bill for the payment of refunds to estates pursuant to section fifteen, chapter two hundred and twenty-eight, laws of one thousand nine hundred and nine, as amended, and refunds to counties pursuant to chapter two hundred and thirty-eight, laws of one thousand nine hundred and nine. * * *."

(Ch. 140, N. J. P. L., 1932, p. 252-3.)

(Appropriation Act)

"D 17. State Tax Department

* * * * * * *

Inheritance Tax Division

* * * * * * *

'Upon approval of the State Tax Commissioner, the Comptroller of the Treasury is hereby authorized and it shall be his duty to withdraw from the State fund such amounts as shall be required to carry out the provisions of

chapter 238, Laws of 1909, and to refund and pay such claims as may be necessary and the State Treasurer shall pay same upon the warrants of said Comptroller, and there is hereby appropriated the amount necessary therefor.' " (Ch. 232, N. J. P. L. 1934, pp. 535, 578, 580.)

The Annual Appropriation Laws of the State of New Jersey, for many years past, have contained the same provision as last above quoted from the Appropriation Act of 1934, and it has been the established practice of the Legislature of the State of New Jersey to include the same provision in each Annual Appropriation Act. All refunds for erroneous or illegal payments of transfer inheritance [fol. 796] taxes are paid out of moneys so appropriated; it has been the established practice of the State Tax Commissioner, and his predecessor in office, in the administration of the Transfer Inheritance Tax Laws of New Jersey, to cause to be made refunds, in accordance with the provisions of the statutes, of the amount of any tax found to have been illegally or erroneously paid; it is the established law of the state that the courts of New Jersey will, in circumstances like the present case, compel a refund of taxes erroneously or illegally paid.

50. Paragraph 50 is denied; further answering said paragraph defendants say that the State of New Jersey has provided full, complete and adequate remedy to the plaintiffs for the recovery of inheritance tax erroneously paid by plaintiffs, or illegally collected by defendants, as set forth in paragraph 49; that said suit is not brought against the defendants individually, but in their representative capacities as officers of the State of New Jersey; the financial resources of said state are ample to pay any refunds of taxes erroneously or illegally paid by the plaintiffs; for the year 1934, the total ratables of real and personal property in said state (exclusive of property taxed by license, gross receipts, or excise taxes in lieu of all other taxes), was in excess of five billion nine hundred million dollars.

51. Paragraph 51 is denied; further answering said paragraph defendants say that the State of New Jersey has provided full, complete and adequate remedy to the plaintiffs for the recovery of inheritance tax erroneously paid by plaintiffs, or illegally collected by defendants, as set forth in paragraphs 49 and 50.

52. Paragraph 52 is admitted.

53. Paragraph 53 is denied.

54. Paragraph 54 is denied.

[fol. 797] 55. Paragraph 55 is denied.

56. Paragraph 56 is denied.

57. Paragraph 57 is denied.

58. Paragraph 58 is denied; further answering said paragraph the defendants say that none of the defendants nor the State of New Jersey, nor any officer of said state, was a party to the suit in which said judgments were entered, and neither of said judgments was ever sued upon or established in any court of New Jersey or of the United States; and neither of said judgments is binding upon these defendants or upon the State of New Jersey.

59. Paragraph 59 is denied; further answering said paragraph the defendants say that plaintiffs are not threatened with irreparable injury, because the plaintiffs may pay the tax, and recover back any amount that may be found to have been illegally or erroneously paid, as set forth in paragraphs 49 and 50; and because the plaintiffs may, at any time within one year from the entry of the judgment in the New Jersey Supreme Court, review the same as a matter of right under the laws and practice of the State of New Jersey, and a stay may be obtained under conditions approved by the court; and from any judgment of the Court of Errors and Appeals, if the same may be adverse to the plaintiffs, they may apply for a review thereof by the Supreme Court of the United States, in accordance with the statutes and practice of that court.

60. Paragraph 60 is denied; further answering said paragraph defendants say that for the reasons stated in paragraph 59 of this answer, plaintiffs are not without adequate remedy at law.

[fol. 798] Further Answering, in lieu of pleas in bar, they say:

First Plea

61. On October 1, 1930, the plaintiffs, as executors under the will of John T. Dorrance, presented their duly verified

petition to the Surrogate of Burlington County, New Jersey, praying for the probate of said will and setting forth therein, under oath, that said John T. Dorrance departed this life at his residence in Cinnaminson Township, in the County of Burlington and State of New Jersey, leaving him surviving as his heirs at law and next of kin, certain persons, including his widow and four children, whose post office addresses were Riverton, New Jersey; pursuant to said petition, said will was admitted to probate, and letters testamentary thereon were issued to the plaintiffs, by the order of said surrogate, dated October 2, 1930, which order is still in full force and effect.

Said order admitting said will to probate and granting letters testamentary thereon to the plaintiffs, was an order of a court of competent jurisdiction under the laws of this State, having jurisdiction over the property of said estate and of the plaintiffs and other parties interested therein; said court judicially determined that said decedent, at the time of his death, was domiciled in the County of Burlington and State of New Jersey; said order has not been appealed and is conclusive and final as between the parties to this suit, and cannot be collaterally attacked.

Wherefore, by reason of the premises, the issue of law and of fact as to the domicile of said decedent was adjudged and decreed against the plaintiffs.

Second Plea

62. In certain proceedings before the New Jersey Prerogative Court, to-wit, an appeal by the plaintiffs to said court from the assessment of transfer inheritance tax made [fol. 799] by the defendant Martin, as Tax Commissioner of the State of New Jersey, upon the estate of John T. Dorrance entitled "In the Matter of the Appeal of Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the Last Will and Testament of John T. Dorrance, deceased from the Assessment of the Transfer Inheritance Taxes against the Estate of the said John T. Dorrance, deceased," in which appeal the plaintiffs were the appellants and the said defendant Martin, in his official capacity as State Tax Commissioner of New Jersey, was respondent (the real party in interest being said State of New Jersey) the same cause of action was alleged by

the plaintiffs on said appeal and the same grounds for reversal of said assessment was there urged by the plaintiffs as they now allege in this suit.

Annexed hereto and made part hereof are copies of said petition of appeal and of the answer of said defendant thereto.

The same rights, facts and matters were put in issue by said petition and answer and were adjudicated upon said appeal, or were necessarily involved therein, as are now claimed and alleged by the plaintiffs in this suit.

The said cause of action was between the same parties in interest or those in privity with them as are the parties in interest or those in privity with them in this suit.

Said New Jersey Prerogative Court was a court of competent jurisdiction to hear and determine the alleged cause of action set forth in said appeal, and to hear and determine the rights, facts and matters that were in issue, or necessarily involved, in said appeal.

The conclusions of said court on the merits were filed on February 7, 1934; supplemental conclusions were filed on May 10, 1934; annexed hereto and made part hereof are copies of said conclusions and said supplemental conclu-
[fol. 800] sions; the final decree of said court was entered on May 11, 1934, wherein and whereby it was ordered, adjudged and decreed as follows:

"It is further ordered, adjudged and decreed that respondent in determining the clear market value of the property of the estate of John T. Dorrance, deceased, allow further deductions (including additional counsel fees and executors' commissions), in the amount of $533,784.81, as allowed by the Orphans Court of Burlington County, New Jersey, and

"It is further ordered, adjudged and decreed that the assessment of transfer inheritance taxes as made by respondent on October 10, 1932, amounting to $12,247,333.52 upon the transfer of the property of said John T. Dorrance, deceased, as that of a resident decedent, subject to the above modifications, be and the same in all other respects is hereby affirmed."

Copy of said decree is annexed hereto and made part hereof.

In and by said final decree of said New Jersey Prerogative Court the issues of law and of fact raised by said appeal and now sought to be raised by the plaintiffs in this suit, were adjudged and decreed against the plaintiffs and in favor of the defendant, J. H. Thayer Martin, and in favor of the State of New Jersey, the real part in interest therein, and the real party in interest in this suit.

Third Plea

63. In certain proceedings before the New Jersey Supreme Court, to-wit, a writ of certiorari allowed by said court, on application of the plaintiffs to review the decree of the New Jersey Prerogative Court affirming (with modifications) the assessment of transfer inheritance tax, made by the defendant, J. H. Thayer Martin, as State Tax Commissioner of the State of New Jersey upon the es-[fol. 801] tate of John T. Dorrance (the said proceedings being entitled, "Ethel M. Dorrance, George Morris Dorrance, M. D., Arthur C. Dorrance and Camden Safe Deposit and Trust Company, Executors of the Last Will and Testament of John T. Dorrance, Deceased, Prosecutors v. J. H. Thayer Martin, State Tax Commsisioner of the State of New Jersey, Respondent"), in which writ the plaintiffs were the prosecutors and the said defendant Martin, in his official capacity as State Tax Commissioner of New Jersey, was respondent (the real party in interest being said State of New Jersey) the same cause of action was alleged by the plaintiffs on said writ and the same grounds for reversal of said assessment and decree were urged there by the plaintiffs as they now allege in this suit; annexed hereto and made part hereof is a copy of the Reasons filed by the plaintiffs as prosecutors of said writ of certiorari.

The same rights, facts and matters were put in issue by the Reasons and other proceedings on said writ of certiorari, and were adjudicated upon said writ, or were necessarily involved therein, as are now claimed and alleged by the plaintiffs in this suit.

The said cause of action was between the same parties in interest, or those in privity with them, as are the parties in interest, or those in privity with them, in this suit.

Said New Jersey Supreme Court was a court of competent jurisdiction, to hear and determine the alleged cause of action, as set forth in said writ, and to hear and deter-

mine the rights, facts and matters that were in issue, or necessarily involved, in said writ; the decision of said court was filed on the merits of said alleged cause of action on February 8, 1935; annexed hereto and made part hereof is a copy of said decision; the final judgment of said court [fol. 802] was entered February 11, 1935, affirming the said decree of the Prerogative Court sustaining said assesment (as modified) and dismissing said writ; annexed hereto and made part hereof is a copy of said final judgment.

In and by said final judgment of said New Jersey Supreme Court, the issues of law and of fact raised by said writ, and now sought to be raised by the plaintiffs in this suit, were adjudged against the plaintiffs and in favor of the defendant, J. H. Thayer Martin, and in favor of the State of New Jersey, the real party in interest therein, and the real party defendant in this suit.

Fourth Plea

64. On October 1, 1930, the plaintiffs, as executors under the will of John T. Dorrance, presented their duly verified petition to the Surrogate of Burlington County, New Jersey, praying for the probate of said will and setting forth therein, under oath, that said John T. Dorrance departed this life at his residence in Cinnaminson Township, in the County of Burlington and State of New Jersey, leaving him surviving as his heirs at law and next of kin, certain persons, including his widow and four children, whose post office addresses were Riverton, New Jersey; pursuant to said petition, said will was admitted to probate, and letters testamentary thereon were issued to the plaintiffs, by the order of said surrogate, dated October 2, 1930, which order is still in full force and effect.

Upon the issuance of said letters testamentary plaintiffs filed with the said Surrogate of Burlington County a sworn statement and deposition that they would exhibit into the Surrogate's Office of the County of Burlington, at or before the expiration of three calendar months, a true and perfect inventory of all and singular the goods and chattels, rights and credits of said deceased, that have or shall come to their knowledge or possession, or to the possession of any other [fol. 803] person for their use; that they shall comply with the provisions of all federal and state laws concerning in-

heritance taxes; that they shall well and truly perform their duties as such executors by first paying the debts of the deceased and then the legacies therein specified, so far as the assets of the estate could thereunto extend and render a true and just account, within twelve calendar months or when thereunto lawfully required.

Thereafter, plaintiffs filed with the Surrogate of Burlington County an inventory and appraisal of said estate on or about April 17, 1931; on or about October 15, 1931, plaintiffs filed their petition for first accounting of said estate in the Burlington County Orphans' Court, a court of competent jurisdiction under the laws of the State of New Jersey, and said accounting was allowed by order of said court on November 5, 1931; on or about November 5, 1932, plaintiffs filed their second intermediate accounting of said estate in said Burlington County Orphans' Court, which was allowed by order thereof entered November 25, 1932.

All proceedings for the administration of the estate up to the present time have been had by the plaintiffs before said court of Burlington County and the plaintiffs, under the orders of said court, have partially administered and distributed the said estate and have paid certain legacies given by the will, and have obtained and filed in said court, refunding bonds and releases for such payments, and have made certain payments on account of the trusts set up by said will, and have received large sums of money as allowances for executors commissions and counsel fees..

The estate of said decedent is still in the course of administration by said Orphans' Court of Burlington County; said will has never been offered for probate, and no letters [fol. 804] of administration or testamentary have ever been granted in the Commonwealth of Pennsylvania, or in any other jurisdiction, except said County of Burlington.

On April 6, 1931, a return and on August 17, 1931, an amended and corrected return, were filed by and in behalf of the plaintiffs as required by the statutes of the State of New Jersey and the Regulations of the Tax Department of said state, stating under oath that said John T. Dorrance was late of Burlington County, State of New Jersey; said estate, as shown in said amended and corrected return, consisted entirely of personal property, made up of bank de-

posits, bonds, stocks, accounts and notes receivable and miscellaneous items amounting to the total sum of One hundred fifteen million, one hundred twenty-one thousand, five hundred eighteen dollars and ninety-two cents; from which deductions were claimed, amounting to Three million, two hundred seventy-nine thousand, four hundred sixty-four dollars and thirty-four cents; the bonds, certificates of stock and other evidence of title to said personal property were then, and still are, located in the State of New Jersey.

Said estate was duly appraised on October 16, 1931, in the net sum of One hundred twelve million, fifty-five thousand, four hundred dollars and eighty-six cents.

Prior to the making of any assessment of taxes, the plaintiffs appeared before the Comptroller of the State of New Jersey and the State Tax Commissioner, respectively, and claimed that the said John T. Dorrance, at the time of his death, was domiciled in the Township of Cinnaminson, County of Burlington and State of New Jersey; and in support of such claim submitted certified copies of the will and the proceedings for probate, and numerous statements, letters and other documents and records; after consideration of such proofs and documents, the comptroller, on May 13, [fol. 805] 1931 found as follows:

"After a careful consideration of all available data, including oral statements submitted by you (referring to the proctor for the plaintiffs) during your recent appearance, the Department has concluded that the legal domicile of the decedent at the date of his death and for many years prior thereto was Cinnaminson, Burlington County, New Jersey";

and thereafter, on October 17, 1931, the State Tax Commissioner served upon the plaintiffs the assessment for inheritance taxes.

On or about December 12, 1931, plaintiffs filed with defendant, J. H. Thayer Martin, as State Tax Commissioner, their petition reciting the proceedings in Pennsylvania for the assessment and collection under the laws of that state, of transfer inheritance taxes upon the estate of said John T. Dorrance, then being administered by plaintiffs under the jurisdiction of the Orphans' Court of Burlington County, New Jersey; that plaintiffs had submitted to said defendant and his predecessor certain evidence as to the domicile of

said John T. Dorrance at the time of his decease; and that plaintiffs had, since the filing of said assessments, obtained a large amount of information, facts and evidence relating to and bearing upon the domicile of said John T. Dorrance at the time of his decease, which was not in their possession at the time of the filing of said assessments, which they desired to submit and present before the final determination of said assessments, and praying that said assessments of October 17, 1931, be opened and set aside and cancelled and for nothing holden and that the proceedings thereon be opened and permission granted to plaintiffs to submit and present to said defendant further and additional information, facts and evidence relating to and bearing upon the [fol. 806] domicile of said John T. Dorrance at the time of his decease, and other information, facts and testimony relating to and bearing upon the estate of said John T. Dorrance, deceased.

Pursuant to said petition said defendant, on December 12, 1931, ordered that said assessment of October 17, 1931, be opened for the purposes set forth in said petition and in accordance with the prayer thereof.

In making said order said defendant relied upon the representations and good faith of plaintiffs and upon the truth and sincerity of the purposes stated in their petition for such opening and cancelling of said assessments and believed that he could safely grant said petition without injury or prejudice to himself or the State of New Jersey. It was not until plaintiffs, shortly after the date thereof, submitted to said defendant, as proof of their claim of decedent's domicile in the Commonwealth of Pennsylvania, then for the first time made by them, a copy of the decision and decree of the Supreme Court of Pennsylvania made September 26, 1932, that said defendant discovered that the real intent and purpose of the plaintiffs, in petitioning for the opening and cancellation of said assessments, was to postpone the effective date of the levy of taxes thereunder and the collection of said taxes thereunder until after the decision and decree of the Supreme Court of Pennsylvania to enable plaintiffs to plead said decree as a bar under the Constitution of the United States to any assessments made by the State of New Jersey under its inheritance tax laws.

Thereupon, on October 10, 1932, said defendant reinstated said assessment and served same upon the plaintiffs.

By withholding and concealing, or remaining silent upon said true intent and purpose of said petition to open and cancel said assessments, plaintiffs fraudulently and de- [fol. 807] signedly misled and deceived said defendant into making said order of December 12, 1931, and fraudulently and designedly induced him to change his position and open and cancel said assessments to the prejudice of the State of New Jersey, and to the profit and advantage of plaintiffs.

Wherefore, by reason of the premises, plaintiffs are estopped from asserting or maintaining that said John T. Dorrance, at the time of his death, was domiciled in the Commonwealth of Pennsylvania; and they are estopped for asserting or maintaining that by reason of the said decision of the Supreme Court of Pennsylvania said John T. Dorrance was, at the time of his death, domiciled in the Commonwealth of Pennsylvania; and they are estopped from asserting or maintaining that the said assessments are erroneous, illegal and void for the reasons alleged in the bill of complaint.

Fifth Plea

65. The Register of Wills of Delaware County, Pennsylvania, was without jurisdiction to make an appraisement as alleged in the bill of complaint, under the laws of Pennsylvania, for transfer inheritance taxes on the estate of said John T. Dorrance, and the Orphans' Court of Delaware County, Pennsylvania and the Supreme Court of Pennsylvania, were without jurisdiction to hear or determine any proceedings relating there to under the laws of Pennsylvania.

In the contest of said appraisement and in the conduct of the appeal therefrom and from the decree of the Orphans' Court of Delaware County, Pennsylvania, it was the duty of the plaintiffs, and necessary to the adequate protection of the rights of the plaintiffs and of the other parties interested in said estate for the purpose of obtaining, if necessary, the review of the decree of the Su- [fol. 808] preme Court of Pennsylvania by the Supreme Court of the United States, that the plaintiffs should properly present to said courts of the State of Pennsylvania the claim that the assessment of the transfer inheritance taxes upon said estate violated the rights of the plaintiffs under the Constitution of the United States; the plaintiffs failed and neglected to properly present to said courts of the State

of Pennsylvania the said claim, and solely by reason of said failure and neglect, plaintiffs were denied a review of the decision of the Supreme Court of Pennsylvania, in and by the Supreme Court of the United States.

Wherefore, by reason of the premises, the plaintiffs are in laches and are barred and estopped from alleging or maintaining in this suit that the domicile of the said decedent, at the time of his death, was in the Commonwealth of Pennsylvania, and from alleging or maintaining in this suit that the said decision of the Supreme Court of Pennsylvania is binding upon the plaintiffs or upon the defendants or upon this court.

Sixth Plea

66. The conclusions of the New Jersey Prerogative Court adjudging that John T. Dorrance at the time of his death was domiciled in the State of New Jersey, were filed on February 7, 1934; and his supplemental conclusions relating solely to certain claimed deductions, were filed on May 10, 1934, and the decree of said court on said conclusions and supplemental conclusions was filed on May 11, 1934.

Plaintiffs did not, on the filing of said conclusions, nor on the entry of said final decree, or promptly thereafter, apply for injunction to this court; but voluntarily applied to and obtained from the New Jersey Supreme Court a writ of certiorari to review said final decree.

[fol. 809] Wherefore by reason of the premises the plaintiffs are in laches and are now barred from further prosecution of this suit.

Further answering, by way of defense in point of law arising upon the face of the bill of complaint, defendants say:

67. The bill of complaint does not allege a cause of action against the defendants, or against any or either of them.

68. Plaintiffs have an adequate remedy at law under the laws of the State of New Jersey.

69. An injunction, if granted in accordance with the prayer of the bill of complaint, would violate section 265 of the Federal Judicial Code (Sec. 379, Title 28, U. S. Code), in that the same would stay proceedings in the state courts, to-wit, proceedings to collect the taxes due and owing from the plaintiffs to the State of New Jersey; as adjudged

and decreed by the final decree of the New Jersey Prerogative Court entered May 11, 1934 in the sum of $12,247,333.52, which said final decree was affirmed by the New Jersey Supreme Court by final judgment entered February 11, 1935.

70. An interlocutory injunction, if granted in accordance with the prayer of the bill of complaint, by this court as constituted by the order of the court entered herein April 2, 1935, is not authorized by Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code) because this suit is not brought to suspend or restrain the enforcement, operation or execution of any statute of the State of New Jersey by restraining the action of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of said state.

[fol. 810] 71. This court has no jurisdiction of the bill of complaint because:

(a) The suit is brought by citizens of New Jersey as plaintiffs against citizens of New Jersey as defendants;

(b) The suit is in fact a suit against the State of New Jersey.

72. The order of the Surrogate of Burlington County admitting the will of the decedent to probate and granting letters testamentary thereon to the plaintiffs was an order of a court of competent jurisdiction under the laws of this State, having jurisdiction over the property of said estate and of the plaintiffs and other parties interested therein; said court judicially determined that said decedent, at the time of his death, was domiciled in the County of Burlington and State of New Jersey; said order has not been appealed and is conclusive and final as between the parties to this suit.

73. In the proceedings before the New Jersey Prerogative Court (mentioned in paragraphs 35, 36 and 37 of the bill of complaint), to wit, an appeal by the plaintiffs to said court from the assessment of transfer inheritance tax made by the defendant, Martin, as Tax Commissioner of the State of New Jersey, upon the estate of John T. Dorrance, in which appeal the plaintiffs were the appellants and the said defendant, Martin, in his official capacity

as State Tax Commissioner of New Jersey was respondent (the real party in interest being said State of New Jersey) the same cause of action was alleged by the plaintiffs on said appeal and the same rights, facts and matters were in issue and were adjudicated upon said appeal or were necessarily involved therein as are now claimed and alleged by the plaintiffs in this suit.

The said cause of action was between the same parties in interest, or those in privity with them, as are the parties in interest, or those in privity with them, in this suit.

[fol. 811] Said New Jersey Prerogative Court was a court of competent jurisdiction to hear and determine the alleged cause of action set forth in said appeal, and to hear and determine the rights, facts and matters that were in issue, or necessarily involved, in said appeal.

In and by said final decree of said New Jersey Prerogative Court the issues of law and of fact raised by said appeal and now sought to be raised by the plaintiffs in this suit were adjudged and decreed against the plaintiffs and in favor of the defendant, J. H. Thayer Martin, and in favor of the State of New Jersey, the real party in interest therein and the real party in interest in this suit.

74. In the proceedings before the Supreme Court of the State of New Jersey (mentioned in paragraph 36 of the bill of complaint) to-wit, a writ of certiorari allowed by said court, on application of the plaintiffs to review the decree of the New Jersey Prerogative Court, affirming (with modification) the assessment of transfer inheritance tax made by the defendant, J. H. Thayer Martin, as State Tax Commissioner of the State of New Jersey, upon the estate of John T. Dorrance, in which writ the plaintiffs were the prosecutors and the said defendant Martin, in his official capacity as State Tax Commissioner of New Jersey, was respondent (the real party in interest being said State of New Jersey) the same cause of action was alleged by the plaintiffs on said writ and the same rights, facts and matters were put in issue and were adjudicated, upon said writ, or were necessarily involved therein, as are now claimed and alleged by the plaintiffs in this suit.

The said cause of action was between the same parties in interest, or those in privity with them, as are the parties in interest, or those in privity with them, in this suit.

[fol. 812] Said New Jersey Supreme Court was a court of competent jurisdiction, to hear and determine the alleged cause of action, as set forth in said writ, and to hear and determine the rights, facts and matters that were in issue or necessarily involved in said writ.

In and by the final judgment of said New Jersey Supreme Court, entered February 11, 1935 (mentioned in paragraph 36 of the bill of complaint) the issues of law and of fact raised by said writ and now sought to be raised by the plaintiffs in this suit, were adjudged against the plaintiffs and in favor of the defendant, J. H. Thayer Martin, and in favor of the State of New Jersey, the real party in interest therein, and the real party defendant in this suit:

75. By virtue of the proceedings for the probate of the will of the decedent and the granting of letters testamentary thereon, and by virtue of the opening of the assessments of transfer inheritance tax on December 12, 1931, at the request of the plaintiffs, as alleged in the bill of complaint, the plaintiffs are estopped from asserting or maintaining that the decedent, at the time of his death, was domiciled in the Commonwealth of Pennsylvania, and from asserting or maintaining that by reason of the decision of the Supreme Court of Pennsylvania (as alleged in the bill of complaint) the said decedent at the time of his death was domiciled in the Commonwealth of Pennsylvania, and from asserting or maintaining that the said assessments as made by the defendant Martin, as State Tax Commissioner of the State of New Jersey, are erroneous, illegal and void, for the reasons alleged in the bill of complaint.

76. The Register of Wills of Delaware County, Pennsylvania, was without jurisdiction to make an appraisement as alleged in the bill of complaint, under the laws [fol. 813] of Pennsylvania, for transfer inheritance taxes on the estate of the decedent, and the Orphans' Court of Delaware County, New Jersey, and the Supreme Court of Pennsylvania, were without jurisdiction to hear and determine any proceedings relating thereto under the laws of Pennsylvania.

In the contest of said appraisement and in the conduct of the appeal therefrom and from the decree of the Orphans' Court of Delaware County, Pennsylvania, as alleged in the bill of complaint, it was the duty of the plain-

tiffs, and necessary to the adequate protection of the rights of the plaintiffs and of the parties interested in said estate for the purpose of obtaining, if necessary, the review of the decree of the Supreme Court of Pennsylvania by the Supreme Court of the United States, that the plaintiffs should properly present to said courts of the State of Pennsylvania the claim that the assessment of the transfer inheritance taxes upon said estate violated the rights of the plaintiffs under the Constitution of the United States; the plaintiffs failed and neglected to properly present to said courts of the State of Pennsylvania the said claim, and solely by reason of said failure and neglect, plaintiffs were denied a review of the decision of the Supreme Court of Pennsylvania, in and by the Supreme Court of the United States.

77. On the filing of the conclusions of the New Jersey Prerogative Court, and on the entry of the final decree therein, as alleged in the bill of complaint, the plaintiffs did not promptly thereafter apply to this court for an injunction, but voluntarily applied to and obtained from the Supreme Court of the State of New Jersey a writ of certiorari to review said final decree.

[fols. 814-887] Wherefore, defendants jointly and severally pray that the complaint be dismissed, with costs.

David T. Wilentz, Attorney General of New Jersey, Solicitor for Defendants. Duane E. Minard, George S. Hobart, Counsel.

[fols. 888 & 889] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity

No. 5091

[Title omitted]

AMENDMENT TO ANSWER—Filed April 12, 1935

Defendants amend their joint and several answer as follows:

1. Amend paragraph 36 to read as follows:

36. They admit that from the decree of the Prerogative Court, the plaintiffs obtained a writ of certiorari

from the Supreme Court of the State of New Jersey, and they admit that on February 11, 1934 said court sustained [fol. 890] said decree of the Prerogative Court; further answering they say that copies of the decision of the Supreme Court and of the judgment of said court sustaining said decree of the Prerogative Court are hereto annexed and made part hereof.

They say that said judgment of the Supreme Court is final, but that the same is subject to judicial review by the Court of Errors and Appeals of the State of New Jersey; further answering they say that under the laws of the State of New Jersey the plaintiffs may have such judicial review by the Court of Errors and Appeals, by an appeal to that court, as a matter of right, within one year after the date of the judgment of said Supreme Court; the plaintiffs have not taken an appeal to said Court of Errors and Appeals.

They admit that said tax cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or by a statutory proceeding in the Prerogative Court of New Jersey; further answering they say that said statutory proceeding is as follows:

"21. If it shall appear to the State Tax Commissioner that any tax which has accrued under this act has not been paid according to law said Commissioner shall report such fact, in writing, to the register of the Prerogative Court, and said register shall issue a citation citing the persons or corporations interested in the property liable to said tax to appear before the Ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid; the service of such citation and the subsequent proceedings had thereon shall conform to the practice prevailing in the Prerogative Court. Upon the making of any degree the register of the Prerogative Court shall, upon the request of the State Tax Commissioner, furnish one or more copies of said decree, and the same shall be docketed and filed by the clerk of the Supreme Court, or by the county clerk of any county in [fol. 891] this State, upon the request of the State Tax Commissioner, and the same shall have the same effect as a lien by judgment and execution shall issue thereon according to the rules and practice appertaining to other judgments docketed and filed with said respective clerks.

"22. Whenever the State Tax Commissioner shall have reason to believe that any tax is due and unpaid under this act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, he shall notify the Attorney-General of this State, in writing, of such failure to pay such tax, and the said Attorney-General, when so notified, if he have probable cause to believe that a tax is due and unpaid, shall prosecute the proceeding before the Ordinary of this State, as provided for in section twenty-one of this act, and the State Treasurer shall, on the warrant of the Comptroller, and the certification of the State Tax Commissioner, pay all the expenses of said proceeding."

2. Amend paragraph 37 to read as follows:

37. They deny that when defendant Martin, State Tax Commissioner, made his said assessment, and when the said assessment had been sustained by the said Prerogative Court, the administrative procedure provided by said inheritance tax act was at an end; and they say that the administrative procedure provided by the said inheritance tax act was at an end at the time the State Tax Commissioner of New Jersey had completed his assessment of the tax against the estate of the decedent on October 10, 1932.

They admit that under the Constitution and Laws of New Jersey, the Supreme Court of New Jersey, on certiorari, is authorized to review the facts as well as the law and to take additional testimony.

They admit that on certiorari, said court is authorized to affirm, reverse or modify the assessment made by the State Tax Commissioner; and they say that on the review of the decree of the Prerogative Court sustaining said assessment, [fol. 892] (with modifications), said Supreme Court sustained said decree and said assessment (as modified by said decree), and entered its judgment dismissing the writ of certiorari brought by the plaintiffs to review said decree; further answering they say that said authority of said Supreme Court is one of the judicial powers of said court inherent therein, under the Constitution and Laws of the State of New Jersey, as one of the prerogatives of said court, to supervise the proceedings and to correct the errors of all statutory tribunals.

They deny that the action of said court in entering its said judgment, affirming as aforesaid the decree of said Prerogative Court, was administrative and not judicial; further answering they say that said judgment of said Supreme Court was by a court of competent jurisdiction in a proceeding between the same parties in interest, or their privies, as are the parties in interest, or their privies, in the present case, and that said judgment of said court is *res judicata* as between the plaintiffs and the defendants in this suit.

3. Amend paragraph 40 to read as follows:

40. They deny paragraph 40; except that they admit that on February 13, 1935, plaintiffs, by their counsel, notified defendant Martin, through his counsel, that plaintiffs intended to take an appeal to the New Jersey Court of Errors and Appeals from the judgment of the Supreme Court of New Jersey; they further admit that under the statutes of New Jersey, plaintiffs may take their appeal to the Court of Errors and Appeals at any time prior to February 11, 1936; they have no knowledge or information sufficient to form a belief as to plaintiffs' allegation that they will take such appeal prior to that date, unless in the meantime this action renders such appeal unnecessary; further answering said paragraph they say that no appeal has been taken by plaintiffs to the Court of Errors and Appeals; that because of the advice of plaintiffs' counsel to defendant Martin, through his counsel, that plaintiffs intended to take an [fols. 893 & 894] appeal to the New Jersey Court of Errors and Appeals, no action has been taken by these defendants, or otherwise, on behalf of the State of New Jersey, to collect said tax, or to enforce the judgment of the Prerogative Court or of the New Jersey Supreme Court.

David T. Wilentz, Attorney General of New Jersey, Solicitor for Defendants. Duane E. Minard, George S. Hobart, Counsel.

[fol. 895] IN SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1935.

No. 194

STATEMENT OF THE POINTS TO BE RELIED ON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 8, 1935

Comes now the appellant in the above-entitled case and states that the points upon which she intends to rely in this Court in this case are as follows:

I. That the District Court of the United States for the District of New Jersey erred in denying the interlocutory injunction prayed for by the plaintiff:

[fol. 896] II. That the District Court of the United States for the District of New Jersey erred in holding that it was without jurisdiction to grant the prayer of the Bill of Complaint for interlocutory injunction.

III. That the District Court of the United States for the District of New Jersey erred in entering the following decree:

"And now, to wit, June 4, 1935, this cause came on to be heard at this term, and was argued by counsel, and upon consideration thereof, it is ordered, adjudged and decreed as follows:

"I. The prayer of the Bill of Complaint for interlocutory injunction be, and is hereby denied for want of jurisdiction to grant such interlocutory injunction."

And the appellant further states that only the following parts of the record as filed in this Court, need be printed by the Clerk for the hearing of the case:

Title of Paper—

Docket Entries

Amended Bill of Complaint, omitting "Exhibit A" and Certificate as to Authority of Notary Public.

Injunction Affidavit of Charlotte Dorrance Wright.

Injunction Affidavit of George Morris Dorrance, M. D.
Supplemental Affidavit of George Morris Dorrance, M. D.
Motion for Temporary Restraining Order and Application for Hearing for Interlocutory Injunction.
Restraining Order.
[fol. 897] Answering Affidavit of William D. Kelly, and the following Exhibits attached thereto:
Exhibit 4.
Exhibit 5.
Exhibit 10.
Exhibit 11.

(Other exhibits to be omitted.)

Reply Affidavit of Gertrude Britton and Exhibit No. 1 attached thereto.
Reply Affidavit of Ethel M. Dorrance.
Reply Affidavit of William H. Donnelly.
Reply Affidavit of Ethel Dorrance Colket.
Reply Affidavit of Elinor Dorrance Hill.
Reply Affidavit of Charles G. Hacker.
Answer and the following Exhibits attached thereto.
Conclusions of Prerogative Court.
Supplemental Conclusions of Prerogative Court.
Final Decree of Prerogative Court.

(All other Exhibits to be omitted.)

Opinion.
Decree Denying Interlocutory Injunction.
Petition for Appeal.
Order Allowing Appeal.
[fol. 898] Assignment of Errors and Prayer for Reversal.
Præcipe for Record and Acceptance of Service.
Defendants' Præcipe for Record and Acceptance of Service.
Plaintiffs' Objection to the Incorporation in the Record of the Matters Specified in Defendants' Præcipe.
Court's Order Under Equity Rule 75.
Statement of Points to be Relied on and Designation of Parts of Record to be Printed.

Wm. A. Schnader, Solicitor for Appellants.

[fol. 899] To the Clerk:

On behalf of the appellees, I accept service of the within Statement of the Points to be Relied On and Designation of the Parts of the Record to be Printed.

Duane E. Minard, Solicitor for Appellees.

Jul. 3, 1935.

[fol. 900] [File endorsement omitted.]

[fol. 901] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1935

No. 194

APPELLEES' COUNTER DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed July 10, 1935

Come now the appellees and designate the following parts of the record which they think material, in addition to those parts designated in the appellants' designation;

Exhibits 6, 7 and 9 annexed to the answering affidavit of William D. Kelly, as printed on pages 32 to 61, both inclusive, of Appellees' printed Answering Affidavit.

"Petition of Appeal by plaintiffs to Prerogative Court," annexed as pages 49 to 59, both inclusive, to Appellees' printed Answer.

"Answer to Petition of Appeal," annexed as pages 60 to 70, both inclusive, to Appellees' printed Answer.

"Reasons on Certiorari," annexed as pages 96 to 103, both inclusive, to Appellees' printed Answer.

Appellees' amendment to Answer.

[fol. 902] Exhibit 1-a submitted with Appellees' Answering Affidavit, the following portions:

Testimony of George Morris Dorrance, M. D. pages 63 to 129a, both inclusive.

Testimony of Arthur C. Dorrance, pages 129a to 169a, both inclusive.

Testimony of William D. Lippincott, pages 174a to 230a, both inclusive, and pages 408a to 417a, both inclusive.

Testimony of Ethel M. Dorrance, pages 250a to 358a, both inclusive.

Exhibit 1-b submitted with Appellees' Answering Affidavit, the following portions:

Testimony of William D. Lippincott, pages 614a to 633a, both inclusive.

Exhibit 3 submitted with Appellees' Answering Affidavit, the following portions;

Pages 1 to 29, both inclusive, and pages 142 to 158, both inclusive.

Appellees' Counter Designation of Parts of the Record to be Printed.

Duane E. Minard, Solicitor for Appellees.

[fol. 903] Service hereof acknowledged this 5th day of July, 1935.

William A. Schnader, Solicitor for Appellants.

[fol. 904] [File endorsement omitted.]

[fol. 905] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1935.

No. 194

STIPULATION AS TO RECORD, BRIEFS AND ARGUMENT—Filed Aug. 3, 1935

And now to wit, this 31st day of July, 1935, it is stipulated and agreed between the above-named appellants, by their solicitor, William A. Schnader, and the above-named appellees, by their solicitors, David T. Wilentz, Attorney General of New Jersey, and Duane E. Minard, that:

1. The amended bill of complaint, the answer (omitting the documents or exhibits annexed as pages 38 to 107 of the printed answer) and the amendment to answer, in the above entitled case, and the printed record in the case of Elinor Dorrance Hill, appellant, vs. J. H. Thayer Martin, et al, appellees, No. 193, October Term, 1935, shall be the record in this case; and

[fols. 906 & 907] 2. This case and Elinor Dorrance Hill, appellant, vs. J. H. Thayer Martin, et al., appellees, No. 193, October Term, 1935, may be briefed and argued together.

However, the parties hereto by entering into this stipulation do not waive their respective rights to have a separate judgment rendered in this case.

W. A. Schnader, Attorney for Appellants. David T. Wilentz, Duane E. Minard, Attorneys for Appellees.

[fol. 908] [File endorsement omitted.]

Endorsed on cover; File No. 39,747. New Jersey, D. C. U. S. Term No. 193. Elinor Dorrance Hill, Appellant, vs. J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, et al, etc. Filed July 1, 1935. Term No. 193 O. T. 1935.

(6815-C)

FILE COPY

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JUL 1 1935
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 193

ELINOR DORRANCE HILL,

Appellant,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

STATEMENT AS TO JURISDICTION AND MOTION TO ADVANCE.

WM. A. SCHNADER,
Counsel for Appellant.

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY

In Equity.

No. 5092

ELINOR DORRANCE HILL,

Plaintiff,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY; WILLIAM D. KELLY, STATE SUPERVISOR, INHERITANCE TAX BUREAU, OF THE STATE OF NEW JERSEY; FRANK J. MURRAY, COMPTROLLER OF THE STATE OF NEW JERSEY; WILLIAM H. ALBRIGHT, STATE TREASURER OF THE STATE OF NEW JERSEY; AND DAVID T. WILENTZ, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,

Defendants.

STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

(a)

Jurisdiction is based upon Section 266 of the Judicial Code, which provides:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or

denying, after notice and hearing, an interlocutory injunction in such case."

(b)

The New Jersey statute, the validity of which is involved on this appeal is the Inheritance Tax Act of April 20, 1909, Laws of 1909, Ch. 228, p. 325.

The provisions of the statute pertinent to this appeal are summarized as follows:

Section 1 imposes a graduated tax, *inter alia*, upon the transfer of any property, real or personal, exceeding $500.00 in value, when the transfer is by will from any person dying, seized or possessed of the property while a resident of the State.

The same section provides that all administrators, executors, trustees, grantees, donees or vendees shall be personally liable for any and all such taxes until they are paid, and that for their collection an action of debt shall lie in the name of the State of New Jersey.

Section 5 provides that the taxes imposed by the act shall be due and payable at the death of the testator and if not paid within one year thereafter shall bear interest at the rate of 10 per centum per annum from the expiration of the year. And that in all cases where the executors do not pay the tax within one year from the date of death they shall be required to give a bond to the State of New Jersey in double the amount of the tax conditioned to pay the tax with interest.

The same section provides that all taxes levied and assessed under the act shall be and remain a lien on all property owned by the decedent as of the date of death until paid or secured by bond.

Section 18 authorizes the State Tax Commissioner to appoint appraisers and take testimony to fix the value of

property subject to taxation under the act. It is the duty of the State Tax Commissioner to "assess and fix the cash value of such estate and levy the tax to which the same is liable," and to give notice by mail to all parties in interest.

The section provides that, "Any person or corporation dissatisfied with said appraisement or assessment may appeal therefrom to the Ordinary of this State within sixty days after the making and filing of such assessment, on giving a bond, approved by the Ordinary of this State, conditioned to pay said tax so as aforesaid levied by the said State Tax Commissioner, together with interest and costs, if the said tax be affirmed by the Ordinary."

Section 20 grants to the Ordinary jurisdiction "to hear and determine all questions in relation to any tax levied under the provisions of this act."

Section 21 provides that if it shall appear to the State Tax Commissioner that any tax which has accrued under the act has not been paid according to law, he shall report that fact in writing to the register of the Prerogative Court who shall issue a citation citing the persons or corporations interested in the property liable to the tax to appear before the Ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid. The service of the citation and the subsequent proceedings shall conform to the practice prevailing in the Prerogative Court. Upon the making of any decree the register of the Prerogative Court is required, upon the request of the State Tax Commissioner, to furnish one or more copies of the decree, "and the same shall be docketed and filed by the clerk of the Supreme Court, or by the county clerk of any county in this State, upon the request of the State Tax Commissioner, and the same shall have the same ef-

fect as a lien by judgment, and execution shall issue thereon according to the rules and practice appertaining to other judgments docketed and filed with said respective clerks."

(c)

The decree sought to be reviewed was entered on June 4, 1935; and the application for appeal was presented on the same day.

The Nature of the Case.

The plaintiff, a daughter and residuary legatee of John T. Dorrance, deceased, seeks an injunction against the State Tax Commissioner and other officers of the State of New Jersey to restrain them from enforcing the New Jersey Inheritance Tax act by collecting transfer inheritance tax on the intangible personal property belonging to said decedent's estate.

The tax claimed by the defendants amounts, with interest, to more than $16,000,000.

This estate has already paid inheritance tax on the same property to the Commonwealth of Pennsylvania, amounting to more than $14,500,000. See 287 U. S. 660; 288 U. S. 617.

The plaintiff brings this action independently of the executors of the will of John T. Dorrance because (a) after the Supreme Court of Pennsylvania held that Dr. Dorrance was domiciled in Pennsylvania at the time of his death, the executors filed a petition with the Surrogate of Burlington County, New Jersey, asking that the probate of the will in New Jersey be revoked, and (b) thereafter the New Jersey State Tax Commissioner filed a petition in the Orphans Court of Burlington County, asking

that the executors be removed for breach of duty in resisting the payment of the New Jersey inheritance tax, and the appointment of the State Treasurer of New Jersey as substituted executor. Both of these petitions are pending and undisposed of.

The executors' petition seeking revocation of probate was filed on April 23, 1933. The executors' appeal to the Supreme Court of New Jersey (hereafter recited) was taken subsequent to May 11, 1934, when the Ordinary rendered his decision. Thus the executors had denied their authority to act under their existing letters testamentary, prior to their appeal to the Supreme Court of New Jersey.

The plaintiff asserts:

1. That inheritance taxes can be collected upon the transfer from a decedent of intangible personal property only by the State in which the decedent was domiciled at the date of his death, and that any attempted collection thereof by any other State is an attempt to take property without due process of law, contrary to the 14th Amendment to the Constitution of the United States. *The Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204 (1930); *Baldwin* v. *Missouri,* 281 U. S. 586 (1930); *Beidler* v. *South Carolina Tax Commission,* 281 U. S. 1 (1930); *First National Bank of Boston* v. *Maine,* 284 U. S. 312 (1932).

2. That prior to his death Dr. John T. Dorrance had established his dwelling place and family home in Pennsylvania without any present intention of not residing there indefinitely, and that accordingly he was domiciled in Pennsylvania at the time of his death. *Williamson* v. *Osenton,* 232 U. S. 619 (1914); *Gilbert* v. *David,* 235 U. S. 561 (1915); Sections 15, 16, 18, 19, 20 Restatement of the Law of Conflict of Laws.

3. That the New Jersey Inheritance Tax Act is unconstitutional under the 14th Amendment if it authorizes the defendants to collect transfer inheritance tax upon the transfer of intangible personal property of a decedent who prior to his death had established a dwelling place and family home in another State without any present intention of not residing there indefinitely.

4. That if the New Jersey Inheritance Tax Act be construed as not applying to property of a decedent under the circumstances heretofore stated, then the threatened collection by the defendants of such tax from the decedent's estate, unconstitutionally deprives the plaintiff of her property without due process of law.

5. That this case parallels *City Bank Farmers Trust Co.* v. *Schnader, et al.*, 291 U. S. 24 (1934), except in two respects, as follows:

(a) That case challenged as unconstitutional a Pennsylvania act otherwise constitutional, if construed as taxing *tangible* personal property alleged to have its situs outside of Pennsylvania. This case challenges as unconstitutional a New Jersey act otherwise constitutional if construed as taxing *intangible* personal property alleged to have its situs outside of New Jersey.

(b) The point at which the action in the Federal court was brought. We shall discuss this difference more fully under the next heading.

The Action of the 3-Judge Court.

This court based its refusal to grant the preliminary injunction solely on the ground that the action here was brought too late. It disclaims jurisdiction under Section 265 of the Judicial Code.

We shall summarize the factual and statutory situation upon which the decision depends.

As already indicated, the New Jersey Inheritance Tax Act authorizes an appeal from the assessment, made by the State Tax Commissioner, to the Ordinary sitting in the Prerogative Court.

We contend that in reviewing tax assessments the Ordinary's function is administrative and not judicial.

The Constitution and statutes of New Jersey permit dissatisfied parties to apply to the Supreme Court of New Jersey for a writ of certiorari to review the action of the Ordinary on tax assessments.

From the decision of the Supreme Court of New Jersey, an appeal may be taken to the Court of Errors and Appeals, which is the State court of last resort.

The executors of Dr. Dorrance appealed to the Ordinary and subsequently carried the matter to the Supreme Court of New Jersey by writ of certiorari.

The Supreme Court of New Jersey affirmed the Tax Commissioner's assessment on February 11, 1935. The executors may take an appeal to the Court of Errors and Appeals at any time prior to February 11, 1936. They have signified their intention of taking such appeal unless the present action renders it unnecessary.

The plaintiff asserts that the review of tax assessments by the Supreme Court of New Jersey is administrative, rather than judicial. She concedes that the ultimate review by the Court of Errors and Appeals is judicial and not administrative.

Under the New Jersey procedure the taxpayers are prosecutors and the State Tax Commissioner is respondent in proceedings testing the correctness of inheritance tax assessments. Accordingly in the New Jersey proceedings up to and including those in the Supreme Court of New Jersey

the executors of Dr. Dorrance were prosecutors, and the State Tax Commissioner was respondent.

The plaintiff was not a party in any of the State court proceedings.

It is conceded by the defendants—as it must be—that under the law of New Jersey, inheritance tax cannot be collected in proceedings before the Ordinary and in the Supreme Court of New Jersey such as those which we have described. An independent action must be brought to collect the tax. Such action would be either an action of debt, under Section 1 of the Inheritance Tax Act, or a statutory proceeding under Section 21.

If the administrative procedure in New Jersey was concluded Dr. Dorrance's executors are free to seek an injunction in the Federal courts. *Bacon* v. *Rutland R. R. Co.*, 232 U. S. 134 (1914). Thus, if the plaintiff has no higher rights than the executors, she may seek such injunction. If she has an independent right of action, the proceedings heretofore had in New Jersey, are immaterial.

Plaintiff contends that even if the executors have taken one step in resisting the payment of the tax through the State's judicial procedure, and she stands in their position, she may nevertheless maintain this action because:

1. The pendency of a prior suit in a state court is not a bar to a suit in the United States courts by the same plaintiff against the same defendant for the same cause of action. *Stanton* v. *Embrey*, 93 U. S. 548 (1876); *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19 (1909); *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U. S. 218 (1913); *Grubb* v. *Public Utilities Commission*, 281 U. S. 470 (1930); *McClellan* v. *Carland*, 217 U. S. 268 (1910).

2. Only a final State court judgment—that is a judgment of the court of last resort of a State, or a lower court judgment in which the parties have acquiesced—can effectively

be pleaded as *res judicata* in a Federal court. *Grubb* v. *Public Utilities Commission,* 281 U. S. 470, 475 (1930); *American Surety Company* v. *Baldwin,* 287 U. S. 156, 164 (1932); *Eastern Building & Loan Ass'n. of Syracuse* v. *Welling,* 103 Fed. 352, 355 (1900); *Tampa Waterworks Co.* v. *City of Tampa,* 124 Fed. 932, 936 (1903); *McWilliams* v. *Hopkins,* 11 F. (2d) 793, 796 (1926); *Belts* v. *Railroad Commission of California,* 6 F. Supp. 591, 592 (1933).

3. In this case, the executors have not acquiesced in the decision of the Supreme Court of New Jersey—an intermediate court of appeal. They have declared their intention of taking an appeal to the highest court of the State within the time allowed by law, unless this action renders that appeal unnecessary.

Finally, this action is not barred by Section 265 of the Judicial Code. Plaintiff is not seeking an injunction to stay proceedings in a State court because:

1. The only proceedings thus far instituted were instituted by the executors of Dr. Dorrance. The proceedings are concluded unless and until the executors take an appeal to the Court of Errors and Appeals.

2. An independent action must be instituted to collect the tax from the estate. No such action has been instituted, and therefore an injunction presently issued would not "stay" any proceedings by the defendants in the New Jersey State courts. As yet there are no proceedings to collect the tax which could be stayed.

3. Proceedings such as those heretofore had in the New Jersey courts do not eventuate in a judgment against the taxpayers for the tax. They eventuate only in an affirmance, disaffirmance or modification of an assessment. The fact that another proceeding is vital to a collection of the tax, does not draw such proceeding within the prohibition

of section 265 of the Judicial Code. *Mississippi R. R. Com.* v. *Illinois Central R. R. Co.*, 203 U. S. 335 (1906).

WM. A. SCHNADER,
Solicitor for and of Counsel with Plaintiff.

1719 Packard Building, Philadelphia, Pa.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 193

ELINOR DORRANCE HILL,

Appellant,

v.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY; WILLIAM D. KELLY, STATE SUPERVISOR, INHERITANCE TAX BUREAU, OF THE STATE OF NEW JERSEY; FRANK J. MURRAY, COMPTROLLER OF THE STATE OF NEW JERSEY; WILLIAM H. ALBRIGHT, STATE TREASURER OF THE STATE OF NEW JERSEY; AND DAVID T. WILENTZ, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,

Appellees.

MOTION TO ADVANCE.

To the Honorable, the Chief Justice and Justices of the Supreme Court of the United States:

Your petitioner, the appellant in the above case, moves that the argument therein be advanced, and in support of her motion respectfully represents:

1. That this case involves the question whether a three-judge court convened under Section 266 of the Judicial Code, in the District Court of the United States for the Dis-

trict of New Jersey, has jurisdiction to issue an injunction against the tax collecting officers of the State of New Jersey, restraining them from collecting a transfer inheritance tax on the intangible personal property of the estate of Dr. John T. Dorrance, deceased;

2. That said Dr. John T. Dorrance died on September 20, 1930; that the executors named in his will qualified promptly; but that his estate cannot be settled as yet, because of litigation, first in the courts of Pennsylvania, and then in the courts of New Jersey, involving the taxability by the said States, respectively, of the intangible personal property belonging to said estate;

3. That said estate was forced to pay to Pennsylvania inheritance tax on said intangible personal property in the amount of $14,500,000, and to post a bond in the amount of $4,000,000 for the payment of additional tax to said State, the precise amount of which has not yet been determined;

4. That the Appellee State Tax Commissioner of the State of New Jersey on October 10, 1932, assessed a transfer inheritance tax on the same intangible personal property in the amount of $12,247,333.52, and claims interest thereon at the rate of ten per centum per annum from September 20, 1931, to the date of payment of said tax;

5. That on December 9, 1932, the executors of the will of said Dr. John T. Dorrance appealed from said assessment to the Ordinary of the State of New Jersey who on May 11, 1934, affirmed the assessment; thereafter said executors filed their petition with the Supreme Court of New Jersey for a writ of certiorari to bring up said assessment for review; and on February 11, 1935, said Supreme Court affirmed said assessment.

6. That your petitioner is advised and therefore avers that she is entitled to injunctive relief in the District Court

of the United States against the collection, from the said estate, of the tax claimed by New Jersey; but the court below has ruled that it is without jurisdiction to grant such relief;

7. That if the decision of the court below be affirmed, the executors of said estate will be compelled to engage in further litigation in the courts of New Jersey to contest the aforesaid assessment of tax and thereafter to contest its collection, and will in due course file their petition for certiorari in this court, all of which will consume many months and possibly a number of years;

8. That if the decision of the court below be reversed, it will be necessary for the court below to proceed to a hearing on the merits, and there will undoubtedly be an appeal to this court by the losing party from the decision of the court below, so that a final decision in the case cannot be had for some months after this court determines the present appeal;

9. That said estate is being seriously prejudiced by the inability of the executors to settle it; and should it be determined that New Jersey is entitled to the tax in question, said estate may be compelled to pay interest at the rate of approximately one hundred thousand dollars ($100,000) per month for delay in the payment of said tax;

10. That on February 11, 1936, the time will expire within which the executors of the will of Dr. Dorrance may appeal from the decision of the Supreme Court of New Jersey to the New Jersey Court of Errors and Appeals; and the decision of your Honorable Court in this case will be determinative of the question whether such an appeal should be taken;

11. That because of the foregoing facts, it is urgently important to said estate, that the present appeal be argued and determined at the earliest date possible;

12. That this appeal involves substantially the same questions as, and can conveniently be heard with, the appeal in Ethel M. Dorrance, et al., appellants v. the same appellees, October Term, 1935, No. 194.

WHEREFORE, your petitioner respectfully moves that the argument herein be advanced.

W. A. SCHNADER,
Attorney for Appellant.

(6609-C)

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1935.

No. 194

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M.D., ARTHUR C. DORRANCE, ET AL., ETC.:
Appellants,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

STATEMENT AS TO JURISDICTION AND MOTION TO ADVANCE.

WM. A. SCHNADER,
Counsel for Appellants.

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY

In Equity. No. 5091

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M. D., ARTHUR C. DORRANCE AND CAMDEN SAFE DEPOSIT AND TRUST COMPANY, EXECUTORS OF THE LAST WILL AND TESTAMENT OF JOHN T. DORRANCE, DECEASED,

Plaintiffs,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY; WILLIAM D. KELLY, STATE SUPERVISOR, INHERITANCE TAX BUREAU, OF THE STATE OF NEW JERSEY; FRANK J. MURRAY, COMPTROLLER OF THE STATE OF NEW JERSEY; WILLIAM H. ALBRIGHT, STATE TREASURER OF THE STATE OF NEW JERSEY; AND DAVID T. WILENTZ, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,

Defendants.

STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

(a)

Jurisdiction is based upon Section 266 of the Judicial Code, which provides:

"An appeal may be taken direct to the Supreme Court of the United States from the order granting or

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The New Jersey statute, the validity of which is involved on this appeal is the Inheritance Tax Act of April 20, 1909, Laws of 1909, ch. 228, p. 325.

The provisions of the statute pertinent to this appeal are summarized as follows:

Section 1 imposes a graduated tax, *inter alia*, upon the transfer of any property, real or personal, exceeding $500.00 in value, when the transfer is by will from any person dying, seized or possessed of the property while a resident of the State.

The same section provides that all administrators, executors, trustees, grantees, donees or vendees shall be personally liable for any and all such taxes until they are paid, and that for their collection an action of debt shall lie in the name of the State of New Jersey.

Section 5 provides that the taxes imposed by the act shall be due and payable at the death of the testator and if not paid within one year thereafter shall bear interest at the rate of 10 per centum per annum from the expiration of the year. And that in all cases where the executors do not pay the tax within one year from the date of death they shall be required to give a bond to the State of New Jersey in double the amount of the tax conditioned to pay the tax with interest.

The same section provides that all taxes levied and assessed under the act shall be and remain a lien on all property owned by the decedent as of the date of death until paid or secured by bond.

Section 18 authorizes the State Tax Commissioner to appoint appraisers and take testimony to fix the value of property subject to taxation under the act. It is the duty of the State Tax Commissioner to "assess and fix the cash value of such estate and levy the tax to which the same is liable," and to give notice by mail to all parties in interest.

The section provides that, "Any person or corporation dissatisfied with said appraisement or assessment may appeal therefrom to the Ordinary of this State within sixty days after the making and filing of such assessment, on giving a bond, approved by the Ordinary of this State, conditioned to pay said tax so as aforesaid levied by the said State Tax Commissioner, together with interest and costs, if the said tax be affirmed by the Ordinary."

Section 20 grants to the Ordinary jurisdiction "to hear and determine all questions in relation to any tax levied under the provisions of this act."

Section 21 provides that if it shall appear to the State Tax Commissioner that any tax which has accrued under the act has not been paid according to law, he shall report that fact in writing to the register of the Prerogative Court who shall issue a citation citing the persons or corporations interested in the property liable to the tax to appear before the Ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid. The service of the citation and the subsequent proceedings shall conform to the practice prevailing in the Prerogative Court. Upon the making of any decree the register of the Prerogative Court is required, upon the request of the State Tax Commissioner, to furnish one or more copies of the decree, "and the same shall be docketed and filed by the clerk of the Supreme Court, or by the county clerk of any county in this

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The decree sought to be reviewed was entered on June 4, 1935; and the application for appeal was presented on the same day.

The Nature of the Case.

The plaintiffs, executors of the will of John T. Dorrance, deceased, seek an injunction against the State Tax Commissioner and other officers of the State of New Jersey to restrain them from enforcing the New Jersey Inheritance Tax Act by collecting transfer inheritance tax on the intangible personal property belonging to the decedent's estate.

The tax claimed by the defendants amounts, with interest, to more than $16,000,000.

This estate has already paid inheritance tax on the same property to the Commonwealth of Pennsylvania, amounting to more than $14,500,000. See 287 U. S. 660; 288 U. S. 617.

The plaintiffs assert:

1. That inheritance taxes can be collected upon the transfer from a decedent of intangible personal property only by the State in which the decedent was domiciled at the date of his death, and that any attempted collection thereof by any other State is an attempt to take property without due process of law, contrary to the 14th Amendment to the Constitution of the United States. The *Farmers Loan &*

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2. That prior to his death Dr. John T. Dorrance had established his dwelling place and family home in Pennsylvania without any present intention of not residing there indefinitely, and that accordingly he was domiciled in Pennsylvania at the time of his death. *Williamson* v. *Osenton,* 232 U. S. 619 (1914); *Gilbert* v. *David,* 235 U. S. 561 (1915); Sections 15, 16, 18, 19, 20 Restatement of the Law of Conflict of Laws.

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a New Jersey act otherwise constitutional if construed as taxing *intangible* personal property alleged to have its situs outside of New Jersey.

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This court based its refusal to grant the preliminary injunction solely on the ground that the action here was brought too late. It disclaims jurisdiction under Section 265 of the Judicial Code.

We shall summarize the factual and statutory situation upon which the decision depends.

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We contend that in reviewing tax assessments the Ordinary's function is administrative and not judicial.

The Constitution and statutes of New Jersey permit dissatisfied parties to apply to the Supreme Court of New Jersey for a writ of certiorari to review the action of the Ordinary on tax assessments.

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The Supreme Court of New Jersey affirmed the Tax Commissioner's assessment on February 11, 1935. The plaintiffs may take an appeal to the Court of Errors and Appeals at any time prior to February 11, 1936. They

have signified their intention of taking such appeal unless the present action renders it unnecessary.

The plaintiffs assert that the review of tax assessments by the Supreme Court of New Jersey is administrative rather than judicial. They concede that the ultimate review by the Court of Errors and Appeals is judicial and not administrative.

Under the New Jersey procedure the taxpayers are prosecutors and the State Tax Commissioner is respondent in proceedings testing the correctness of inheritance tax assessments. Accordingly in the New Jersey proceedings up to and including those in the Supreme Court of New Jersey the plaintiffs in this present case were prosecutors, and the State Tax Commissioner was respondent.

It is conceded by the defendants—as it must be—that under the law of New Jersey, inheritance tax cannot be collected in proceedings before the Ordinary and in the Supreme Court of New Jersey such as those which we have described. An independent action must be brought to collect the tax. Such action would be either an action of debt, under Section 1 of the Inheritance Tax Act, or a statutory proceeding under Section 21.

If the administrative procedure in New Jersey was concluded plaintiffs are free to seek an injunction in the Federal courts. *Bacon* v. *Rutland R. R. Co.*, 232 U. S. 134 (1914).

Plaintiffs contend that even if they have taken one step in resisting the payment of the tax through the State's judicial procedure, they may nevertheless maintain this action because:

1. The pendency of a prior suit in a State court is not a bar to a suit in the United States courts by the same plaintiff against the same defendants for the same cause of action. *Stanton* v. *Embrey*, 93 U. S. 548 (1876); *Willcox* v.

Consolidated Gas Co., 212 U. S. 19 (1909); *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U. S. 278 (1913); *Grubb* v. *Public Utilities Commission*, 281 U. S. 470 (1930); *McClellan* v. *Carland*, 217 U. S. 268 (1910).

2. Only a final State court judgment—that is a judgment of the court of last resort of a State, or a lower court judgment in which the parties have acquiesced—can effectively be pleaded as *res judicata* in a Federal court. *Grubb* v. *Public Utilities Commission*, 281 U. S. 470, 475 (1930); *American Surety Company* v. *Baldwin*, 287 U. S. 156, 164 (1932); *Eastern Building & Loan Ass'n of Syracuse* v. *Welling*, 103 Fed. 352, 355 (1900); *Tampa Waterworks Co.* v. *City of Tampa*, 124 Fed. 932, 936 (1903); *McWilliams* v. *Hopkins*, 11 F. (2d) 793, 796 (1926); *Belts* v. *Railroad Commission of California*, 6 F. Supp. 591, 592 (1933).

3. In this case, the plaintiffs have not acquiesced in the decision of the Supreme Court of New Jersey—an intermediate court of appeal—and have declared their intention of taking an appeal to the highest court of the State within the time allowed by law, unless this action renders that appeal unnecessary.

Finally, this action is not barred by Section 265 of the Judicial Code. Plaintiffs are not seeking an injunction to stay proceedings in a State court because:

1. The only proceedings thus far instituted were instituted by the plaintiffs themselves. The proceedings are concluded unless and until the plaintiffs take an appeal to the Court of Errors and Appeals.

2. An independent action must be instituted to collect the tax from plaintiffs. No such action has been instituted, and therefore an injunction presently issued would not "stay" any proceedings by the defendants in the New

Jersey State courts. As yet there are no proceedings to collect the tax which could be stayed.

3. Proceedings such as those heretofore had in the New Jersey courts do not eventuate in a judgment against the taxpayers for the tax. They eventuate only in an affirmance, disaffirmance or modification of an assessment. The fact that another proceeding is vital to a collection of the tax, does not draw such proceeding within the prohibition of section 265 of the Judicial Code. *Mississippi R. R. Com.* v. *Illinois Central R. R. Co.*, 203 U. S. 335 (1906).

WM. A. SCHNADER,
Solicitor for and of Counsel with Plaintiffs.

1719 Packard Building, Philadelphia, Pa.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 194

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M. D., ARTHUR C. DORRANCE AND CAMDEN SAFE DEPOSIT AND TRUST COMPANY, EXECUTORS OF THE LAST WILL AND TESTAMENT OF JOHN T. DORRANCE, DECEASED,

Appellants,

v.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY; WILLIAM D. KELLY, STATE SUPERVISOR, INHERITANCE TAX BUREAU, OF THE STATE OF NEW JERSEY; FRANK J. MURRAY, COMPTROLLER OF THE STATE OF NEW JERSEY; WILLIAM H. ALBRIGHT, STATE TREASURER OF THE STATE OF NEW JERSEY; AND DAVID T. WILENTZ, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,

Appellees.

MOTION TO ADVANCE.

To the Honorable, the Chief Justice and Justices of the Supreme Court of the United States:

Your petitioners, the appellants in the above case, move that the argument therein be advanced, and in support of their motion respectfully represent:

1. That this case involves the question whether a three-judge court convened under Section 266 of the Judicial

Code, in the District Court of the United States for the District of New Jersey, has jurisdiction to issue an injunction against the tax collecting officers of the State of New Jersey, restraining them from collecting a transfer inheritance tax on the intangible personal property of the estate of Dr. John T. Dorrance, deceased;

2. That said Dr. John T. Dorrance died on September 20, 1930; that the appellants qualified as executors of his Will promptly; but that his estate cannot be settled as yet, because of litigation, first in the courts of Pennsylvania, and then in the courts of New Jersey, involving the taxability by the said States, respectively, of the intangible personal property belonging to said estate;

3. That said estate was forced to pay to Pennsylvania inheritance tax on said intangible personal property in the amount of $14,500,000, and to post a bond in the amount of $4,000,000 for the payment of additional tax to said State, the precise amount of which has not yet been determined;

4. That the appellee State Tax Commissioner of the State of New Jersey on October 10, 1932, assessed a transfer inheritance tax on the same intangible personal property in the amount of $12,247,333.52, and claims interest thereon at the rate of ten per centum per annum from September 20, 1931, to the date of payment of said tax;

5. That on December 9, 1932, the appellants appealed from said assessment to the Ordinary of the State of New Jersey who on May 11, 1934, affirmed the assessment; thereafter they filed their petition with the Supreme Court of New Jersey for a writ of certiorari to bring up said assessment for review; and on February 11, 1935, said Supreme Court affirmed said assessment.

6. That your petitioners are advised and therefore aver that they are entitled to injunctive relief in the District Court of the United States against the collection, from the said estate, of the tax claimed by appellees as officers of New Jersey; but the court below has ruled that it is without jurisdiction to grant such relief;

7. That if the decision of the court below be affirmed, appellants will be compelled to engage in further litigation in the courts of New Jersey to contest the aforesaid assessment of tax and thereafter to contest its collection, and will in due course file their petition for certiorari in this Court, all of which will consume many months and possibly a number of years;

8. That if the decision of the court below be reversed, it will be necessary for the court below to proceed to a hearing on the merits, and there will undoubtedly be an appeal to this Court by the losing party from the decision of the court below, so that a final decision in the case cannot be had for some months after this Court determines the present appeal;

9. That said estate is being seriously prejudiced by the inability of appellants to settle it; and should it be determined that New Jersey is entitled to the tax in question, said estate may be compelled to pay interest at the rate of approximately one hundred thousand dollars ($100,000) per month for delay in the payment of said tax;

10. That on February 11, 1936, the time will expire within which appellants may appeal from the decision of the Supreme Court of New Jersey to the New Jersey Court of Errors and Appeals; and the decision of your Honorable Court in this case will be determinative of the question whether such an appeal should be taken;

11. That because of the foregoing facts, it is urgently important to said estate, that the present appeal be argued and determined at the earliest date possible;

12. That this appeal involves substantially the same questions as, and can conveniently be heard with, the appeal in Elinor Dorrance Hill, appellant v. the same appellees, October Term, 1935, No. 193.

WHEREFORE, your petitioners respectfully move that the argument herein be advanced.

WM. A. SCHNADER,
Attorney for Appellants.

FILE COPY

FILED
JUL 1 1935
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 193. **October Term, 1935.**

ELINOR DORRANCE HILL,

Appellant,

v.

J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey; WILLIAM D. KELLY, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey; FRANK J. MURRAY, Comptroller of the State of New Jersey; WILLIAM H. ALBRIGHT, State Treasurer of the State of New Jersey; and DAVID T. WILENTZ, Attorney General of the State of New Jersey,

Appellees.

Brief Contra Motion to Dismiss.

WILLIAM A. SCHNADER,
JOHN MILTON,
Solicitors for Appellant.

1719 Packard Building,
Philadelphia, Pa.

International, 236 Chestnut St., Philadelphia

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1935. No. 193.

ELINOR DORRANCE HILL,

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J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey; WILLIAM D. KELLY, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey; FRANK J. MURRAY, Comptroller of the State of New Jersey; WILLIAM H. ALBRIGHT, State Treasurer of the State of New Jersey; and DAVID T. WILENTZ, Attorney General of the State of New Jersey,

Appellees.

BRIEF CONTRA MOTION TO DISMISS

STATEMENT

In their "Statement in Answer to Appellants' Statement as to Jurisdiction," appellees have included a motion to dismiss.

We should not file this brief, but for the confusing statements made by appellees regarding the nature, effect, and finality of the proceedings before the New Jersey authorities contesting the New Jersey inheritance tax assessment.

Accordingly, in this brief we shall endeavor to establish:

1. That no proceeding has as yet been instituted by New Jersey or by the agents of New Jersey to collect inheritance tax on the intangible personal property of the Dorrance estate.

2. That the proceedings thus far had in New Jersey have been administrative and not judicial.

3. That regardless of whether the proceedings have been administrative or judicial, they have not eventuated in a judgment in favor of New Jersey for tax due by the Dorrance estate upon which execution could issue.

4. That, assuming the action of the Supreme Court of New Jersey to be judicial rather than administrative, the action of that court is not a final judgment which bars proceedings in a Federal Court between the same parties involving the same questions.

5. That this case comes within Section 266 of the Judicial Code.

6. That neither Section 265 of the Judicial Code nor a plea of res judicata deprives the court below of jurisdiction to grant the injunction prayed for in the bill of complaint.

ARGUMENT.

I.

NO ACTION HAS AS YET BEEN INSTITUTED BY THE NEW JERSEY AUTHORITIES TO COLLECT INHERITANCE TAX FROM THE DORRANCE ESTATE.

Paragraph 43 of the Amended Bill of Complaint reads as follows:

> "43. From the decree of the Prerogative Court, executors obtained a writ of certiorari from the Supreme Court of the State of New Jersey, which on February 11, 1935, sustained the decree of the Prerogative Court. The action of the Supreme Court is not final, being subject to judicial review by the Court of Errors and Appeals. **And the tax which defendants demand cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or a statutory proceeding in the Prerogative Court of New Jersey.**"

In their Amendment to Answer, appellees say, *inter alia,* in reply to paragraph 43 of the Amended Bill of Complaint

> "**They admit that said tax cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or by a statutory proceeding in the Prerogative Court of New Jersey;** further answering they say that said statutory proceeding is as follows:
>
> " '21. If it shall appear to the State Tax Commissioner that any tax which has accrued under this act has not been paid according to law said

Commissioner shall report such fact, in writing, to the register of the Prerogative Court, and said register shall issue a citation citing the persons or corporations interested in the property liable to said tax to appear before the Ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid; the service of such citation and the subsequent proceedings had thereon shall conform to the practice prevailing in the Prerogative Court. Upon the making of any decree the register of the Prerogative Court shall, upon the request of the State Tax Commissioner, furnish one or more copies of said decree, and the same shall be docketed and filed by the clerk of the Supreme Court, or by the county clerk of any county in this State, upon the request of the State Tax Commissioner, and the same shall have the same effect as a lien by judgment, and execution shall issue thereon according to the rules and practice appertaining to other judgments docketed and filed with said respective clerks.

" '22. Whenever the State Tax Commissioner shall have reason to believe that any tax is due and unpaid under this act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, he shall notify the Attorney-General of this State, in writing, of such failure to pay such tax, and the said Attorney-General, when so notified, if he have probable cause to believe that a tax is due and unpaid, shall prosecute the proceeding before the Ordinary of this State, as provided for in section twenty-one of this act, and the State Treasurer shall, on the warrant of the Comptroller, and the certification of the State Tax Commissioner, pay all the expenses of said proceeding.' "

Thus the appellees have definitely admitted by their answer that as yet they have not instituted either of the alternative forms of action necessary to collect transfer inheritance tax from the Dorrance Estate.

Hitherto the only litigation in New Jersey relating to the tax in question has been the executors' appeal from the assessment of tax made by the State Tax Commissioner.

The procedure open to the executors under the statutes of New Jersey was as follows:

(1) The executors had a right to appeal to the Ordinary from the assessment made by the State Tax Commissioner. The Ordinary embodied his action on the appeal in a decree filed in the Prerogative Court.

(2) The Ordinary having sustained the assessment, the executors had a right to petition the Supreme Court of New Jersey for a writ of certiorari bringing up for review the action of the Ordinary.

(3) The Supreme Court having sustained the assessment, the executors now have a right to take an appeal to the Court of Errors and Appeals.

Both in the proceedings before the Ordinary and before the Supreme Court of New Jersey, the executors were the plaintiffs or prosecutors, and the State Tax Commissioner was the defendant or respondent.

The only result of the litigation thus far has been that the assessment made by the State Tax Commissioner has been sustained.

The State of New Jersey has not been a party to the proceedings, nor have the proceedings eventuated in a judgment in favor of the State or its collecting officer and against the executors.

As appellees admit, to convert the assessment into an enforceable judgment, an independent action must be instituted. That action may be either an action of debt or what is denominated a statutory proceeding in the Prerogative Court.

Such action of debt or such statutory proceeding in the Prerogative Court is entirely independent of the executors' appeal from the assessment.

The executors' appeal from the assessment was a proceeding instituted **by** the executors. The action of debt or the statutory proceeding in the Prerogative Court would be an action instituted **against** the executors.

In this case the time has not expired within which the executors may as a matter of right appeal from the decision of the Supreme Court of New Jersey sustaining the assessment, to the Court of Errors and Appeals. That time will not expire until February 11, 1936.

At the moment there is no litigation actually pending in New Jersey regarding either the assessment or the collection of the tax, but the executors have signified their intention of taking an appeal to the Court of Errors and Appeals, should that step be necessary to protect the interests of the estate.

It seems clear that an injunction to restrain the collection of the tax could not under any circumstances be regarded as a stay of proceedings in a State court within the meaning of Section 265 of the Judicial Code. In the only proceedings which have as yet been instituted, the executors were the moving parties; and if those proceedings are carried further, the executors must take the next step. An injunction against the appellees will not prevent

the executors from taking their appeal to the Court of Errors and Appeals.

Of course, every injunction restraining the collection of a tax prevents litigation from being commenced to collect it. But Section 265 of the Judicial Code has never been construed as preventing the issuance of such an injunction. That section forbids Federal interference with pending State litigation; nothing more.

What we have said is true even though it were to be conceded that the action both of the Ordinary and of the Supreme Court of New Jersey in reviewing the State Tax Commissioner's assessment was judicial in character.

II.

THE PROCEEDINGS HERETOFORE HAD IN THE NEW JERSEY COURTS HAVE BEEN ADMINISTRATIVE AND NOT JUDICIAL.

Clearly, if the proceedings thus far had in the New Jersey courts have been administrative and not judicial, the executors of the will of Dr. Dorrance had a right at their conclusion to ask for relief in the District Court of the United States. See **Prentis** v. **Atlantic Coast Line Company**, 211 U. S. 210 (1908); **Bacon** et al. v. **Rutland R. R. Co.**, 232 U. S. 134 (1914); **Pacific Telephone & Telegraph Company** v. **Kuykendall**, 265 U. S. 196 (1924).

In **Miller** v. **McCutcheon**, 175 Atl. 155, (1934), the New Jersey Court of Errors and Appeals said in discussing the function of the Ordinary in reviewing tax assessments:

> ". . . The Ordinary, in exercising the power conferred by the statute (supra) to hear and determine tax questions of this character, is a statutory agent only . . ."

In **Nevin** et al. v. **Martin** et al., now pending before the District Court of the United States for the District of New Jersey, In Equity No. 4805, the present Attorney General of New Jersey filed an exhaustive brief in support of his position that the action of the Ordinary in reviewing assessments made by the State Tax Commissioner was purely administrative and not judicial. We print as an appendix hereto, the exact language used by the Attorney General in pressing this point.

It can scarcely be argued that the action of "a statutory agent only" may be regarded as judicial. Certainly that is not the language which the highest court of any state would employ to characterize a judicial officer in the performance of a judicial duty. The position of the Attorney General of New Jersey in the **Nevin Case**, that in reviewing tax assessments the Ordinary's action is purely administrative and not judicial, is sound. His position in the present case, that the Ordinary's action is wholly judicial and not administrative, is neither consistent nor sound.

We now reach the question: What is the nature of the review by the Supreme Court of New Jersey of the action of the Ordinary in tax cases such as this?

In reviewing tax assessments the Supreme Court of New Jersey functions under Section 11 of the New Jersey Certiorari Act of 1903 as amended by the Act of April 12, 1907 P. L. 95.

That act provides that:

"**In all cases of writs of certiorari** now pending or hereafter **brought to remove any tax or assessment**, or other order or proceeding touching any local or public improvement, or to review the proceedings of any special statutory tribunal, or to review the sus-

pension, dismissal, retirement or reduction in rank of any person holding an office or position, state, county or municipal, from which he is removable only for cause and after trial, the courts shall determine disputed questions of fact, as well as of law, and inquire into the facts by depositions taken on notice, or in such other manner as is according to the practice of the court; provided, either party may use the testimony taken before the tribunal, board or officer whose action is being reviewed which testimony shall be considered by the court the same as if it had been taken by deposition on notice and either party may take additional testimony. The court may reverse or affirm, in whole or in part, such tax or assessment or other order or proceeding, finding or determination, suspension, dismissal, retirement or reduction in rank reviewed."

This act has been sustained as constitutional. **Royal Mfg. Co.** v. **City of Rahway**, 75 N. J. Law 416 (1907).

In **Trenton & Mercer County Traction Corporation** v. **Mercer County Board of Taxation**, 92 N. J. Law 398 (1918), the Court of Errors and Appeals reversed the action of the Supreme Court of New Jersey in a tax case on the ground that it confined its review of the facts to a consideration of the question whether there was any evidence to support the findings below. Speaking for the court Judge Swayze said:

"The Supreme Court took too narrow a view of its functions in this case. It held that the judgment of the county board of taxation was not unreasonably or illegally reached and was supportable upon the facts and the figures adduced before it. This involved merely a determination that there was no erroneous legal principle shown to have been adopted by the county board, and that there was evidence to support its finding. But

this determination was not a compliance with the mandate of the Tax Act or of the Certiorari Act . . .

"Section 11 of the Certiorari Act as amended in 1907 (P. L. 95; 1 C. S. 405) requires the Supreme Court to determine disputed questions of fact in tax cases as well as in other cases therein set forth. . . . In the present case the Supreme Court failed to make an independent determination of facts, and contented itself with finding that there was a legal basis for the result reached by the county board of taxation whether or not that result was right in fact. This error makes it necessary to reverse the judgment and remit the record to the Supreme Court in order that it may find the facts."

See also similar language in the opinion of the Court of Errors and Appeals in **Gibbs** v. **State Board of Taxes and Assessment,** 101 N. J. L. 371 (1925).

That the Supreme Court of New Jersey is established by the Constitution of New Jersey does not to any degree determine the question whether its action in reviewing such assessments is administrative or judicial. Nor does the procedure for bringing up assessments for review. As a matter of fact the Prerogative Court,—in which the Ordinary files his decree,—is likewise established by the Constitution of New Jersey.

This Court has held in the following cases that courts created by State Constitutions were exercising administrative rather than judicial functions:

Prentis v. **Atlantic Coast Line Company,** 211 U. S. 210 (1908);

Oklahoma Natural Gas Company v. **Russell** et al., 261 U. S. 290 (1923).

In the cases just cited the procedure by which the courts were authorized to review the actions of inferior administrative agencies was by appeal.

And this court has held that courts were exercising administrative functions even though their jurisdiction was invoked by bill in equity, in:

Keller v. **Potomac Electric Co.**, 261 U. S. 428 (1922);

Radio Commission v. **General Electric Co.**, 281 U. S. 464 (1930); and

Porter v. **Investors Syndicate**, 286 U. S. 461 (1932).

We submit that on this point the present case parallels **Radio Commission** v. **General Electric Company**, 281 U. S. 464 (1930). And the New Jersey procedure is quite different from the Pennsylvania procedure which this Court said was judicial, in **City Bank Farmers Trust Co.** v. **Schnader**, et al., 291 U. S. 24 (1934).

In the **Radio Commission Case** the court was authorized to examine the record before the administrative tribunal,—the Radio Commission,—to take additional evidence upon such terms and conditions as it might deem proper, to hear, review and determine the appeal upon said record and evidence, and to alter and revise the decision appealed from and enter such judgment as to it might seem just.

In this case the Supreme Court of New Jersey under the Certiorari Act was authorized to determine disputed questions of fact as well as of law, to inquire into the facts by deposition or in such other manner as is in accordance with the practice of the court, and to reverse or affirm in whole or in part the assessment reviewed.

Unlike the procedure in Pennsylvania to which this court referred in the **Schnader Case**, the New Jersey procedure does not bring the State into court as plaintiff nor

make the taxpayer defendant in the proceeding. The case is not tried as an ordinary appeal before the Supreme Court of New Jersey. It is a review on certiorari under the express terms of the New Jersey Certiorari Act we have quoted.

As we have previously stated, under the New Jersey procedure the action in the Supreme Court was between the executors of the Dorrance Estate as prosecutors, and the State Tax Commissioner as respondent. At its conclusion there was not a judgment in favor of the State of New Jersey and against the executors. Such a judgment, we repeat, could be obtained only by the institution of an action of debt or of a new statutory proceeding in the Prerogative Court in which the decree of the court could be entered as a judgment against the taxpayers.

III.

RELIEF BY THE DISTRICT COURT OF THE UNITED STATES IS NOT BARRED BY THE DECISION OF THE SUPREME COURT OF NEW JERSEY.

If, as we contend, the Supreme Court of New Jersey acts administratively in reviewing tax assessments, obviously its decision cannot be pleaded as res judicata in an action in equity in a Federal court.

But even if the action of the Supreme Court of New Jersey were judicial and not administrative, nevertheless its decision could not under the circumstances of this case be pleaded as res judicata.

The executors of the Dorrance Estate may as a matter of right appeal from the decision of the Supreme Court of New Jersey to the Court of Errors and Appeals. Their time for taking an appeal does not expire until February 11, 1936. They have stated their intention of taking an

appeal unless the action in the Federal court renders such an appeal unnecessary. See paragraph 47 of plaintiff's Amended Bill of Complaint, the concluding sentences of which are,

> "Under the statutes of New Jersey, executors may take their appeal to the Court of Errors and Appeals at any time prior to February 11, 1936. Executors will take such appeal prior to that date, unless in the meantime this action renders such appeal unnecessary."

We submit that there is a marked difference between the application of the doctrine of res judicata as between the courts of a State, and as between State and Federal courts.

Necessarily the judgment of a lower court of a State may be pleaded as a bar to the trial of the same issue between the same parties in another lower court of the same State, even though an appeal is pending to an appellate court of the State.

But the right of a party to invoke the jurisdiction of a Federal court cannot be barred by a plea of res judicata, unless the pleaded judgment is either that of the State court of last resort and the period for appeal or petition for certiorari (in proper cases) to this Court has expired, or the judgment of a lower State court in which the parties have acquiesced without resort to the appellate court. This rule was clearly stated by Judge Simonton in **Eastern Building & Loan Association of Syracuse** v. **Welling**, 103 Fed. 352 (D. S. C. Car. 1900), 355.

This Court has repeatedly spoken of "a final judgment" in dealing with the effect of a plea of res judicata.

In **Grubb** v. **Public Utilities Commission**, 281 U. S. 470 (1930), Mr. Justice Van Devanter, at page 476, spoke of a final judgment in the State court as barring future proceedings in a Federal court. At page 475 in stating the facts of the case, he said:

> "After a hearing in which all of the parties participated the state court rendered a judgment sustaining and affirming the Commission's order in its entirety. 119 O. S. 264. **No effort was made to have that judgment reviewed by this Court, and after the three months allotted for applying for such a review had elapsed,** the defendants in the suit in the District Court, . . . interposed answers setting up the judgment as a bar to the further prosecution of the suit . . ."

In **American Surety Company** v. **Baldwin**, 287 U. S. 156 (1932), Mr. Justice Brandeis, at page 164, spoke of proceedings taken in the State court "which ripened into a final judgment," constituting res judicata.

In this case the executors have not exhausted the State procedure and have given notice of their intention to take a further appeal to which they are entitled as a matter of right.

Thus the decision of the Supreme Court of New Jersey even though it be regarded as judicial rather than administrative is not a bar to the prosecution of an action in the court below by the executors of the Dorrance estate, much less of an action by a legatee to protect her own interests after the executors have denied their authority to act as such, and the State authorities have taken steps to have the executors removed. See Statement as to Jurisdiction for the facts to which we refer.

IV.

THIS CASE COMES WITHIN SECTION 266 OF THE JUDICIAL CODE.

In their motion to dismiss this appeal, appellees state dogmatically that this case does not come within Section 266 of the Judicial Code.

We submit that the only differences between this case and **City Bank Farmers Trust Co.** v. **Schnader**, 291 U. S. 24 (1934) are (1) that this action was brought after the State taxing officer had made his assessment and that assessment had been reviewed by the Ordinary and the Supreme Court of New Jersey, whereas in the **City Bank Farmers Trust Company Case**, a Federal action was brought before the State taxing officer had concluded his assessment; and (2) that the present case involves the situs of **intangible** personal property for inheritance tax purposes, whereas the **City Bank Farmers Trust Company Case** involved the situs of **tangible** personal property for inheritance tax purposes.

In each case the statute in question was not alleged to be unconstitutional per se. It was alleged to be unconstitutional only because if applied to certain facts, the statute would authorize the taking of property of an estate without due process of law. This has repeatedly been held to be such a challenge of the constitutionality of an act as comes within Section 266 of the Judicial Code. See **Sterling** et al v. **Constantin**, 287 U. S. 378 (1932).

If the allegations of the bill of complaint in **City Bank Farmers Trust Company** v. **Schnader** brought that controversy under Section 266 of the Judicial Code, as this Court held they did, then the allegations of the bill of complaint in the present case bring this controversy within Section 266 of the Judicial Code.

V.

THIS CASE PRESENTS A NOVEL PROBLEM.

We have pleaded the judgment of the Supreme Court of Pennsylvania, subjecting the Dorrance estate to Pennsylvania transfer inheritance tax on the estate's intangible personal property.

The Ordinary of New Jersey held that a judgment for inheritance tax is an action in rem. His decision was affirmed in a per curiam opinion by the Supreme Court of New Jersey.

If such a judgment is in rem it would seem to be binding upon all parties, whether or not they appeared in the particular litigation in which the judgment was rendered.

We have also averred notice to the New Jersey authorities of the pendency of the Pennsylvania litigation, the appearance therein as a witness of one of the present appellees, and an invitation by the executors of the estate to the New Jersey authorities to participate in the Pennsylvania litigation.

If we have presented a Federal question in this case,—as we are confident we have,—the situation is this:

Is a Federal court bound to accept as a finality the judgment of a court of intermediate appeal in New Jersey, holding the decedent domiciled in that State, notwithstanding the judgment of the Pennsylvania court of last resort that the decedent died domiciled in Pennsylvania?

Or, in such a case, do the usual rules of comity between State and Federal courts give way, leaving the Federal court free to ascertain the facts and reach its conclusion independently of the prior decision of either State court?

Or, if judgments in such cases be in rem, is the Court bound, upon taking jurisdiction, to treat the Pennsylvania judgment as final and binding upon the world?

We believe that the situation here presented has never come before this Court.

VI.

CONCLUSION.

We believe that appellees' motion to dismiss this appeal should be denied.

Respectfully submitted,

WM. A. SCHNADER,
JOHN MILTON,
Solicitors for Appellant.

APPENDIX

Reproduction of Cover Page and
Pages 36 to 42 of the

BRIEF OF THE APPELLEES AS TAX COLLECTING OFFICERS OF THE STATE OF NEW JERSEY

in

Edwin C. Nevin, Executor etc., Plaintiffs, vs. **J. H. Thayer Martin**, et al., Defendants, in the United States District Court for the District of New Jersey, Equity No. 4805, Now Pending.

United States District Court

DISTRICT OF NEW JERSEY.

EQUITY No. 4805

EDWIN C. NEVIN, Executor of the last will and testament of Walter Ross McShea, dec'd, et als.,

Plaintiffs,

vs.

J. H. THAYER MARTIN, State Tax Commissioner, etc., et als.,

Defendants.

On Bill for Injunction.

On Motion to Dismiss Bill and Dissolve Temporary Order.

BRIEF OF DEFENDANTS

DAVID T. WILENTZ,
Attorney-General of New Jersey,
Attorney for Defendants,

WILLIAM A. MOORE,
Of Special Counsel.

POINT IV

PLAINTIFFS HAVE NOT EXHAUSTED THEIR ADMINISTRATIVE REMEDIES IN THE COURTS OF THIS STATE

An adequate administrative (sometimes called "legislative") remedy will always defeat federal jurisdiction:

First National Bank vs. *Weld Co.*, 264 U. S. 450;
Gorham Mfg. Co. vs. *Tax Commission*, 266 U. S. 265;
Porter vs. *Investors Syndicate*, 286 U. S. 461;
Keller vs. *Potomac Electric Company*, 261 U. S. 428;
Prentis vs. *Atlantic Coast Line*, 211 U. S. 210.

A statutory right of review of administrative action, where the reviewing agency may "set aside, modify or confirm" the action below, is an administrative remedy which must be exhausted before resort may be had to a federal equity court.

Porter vs. *Investors Syndicate, supra* (p. 468);
Keller vs. *Potomac Electric Company, supra* (pp. 440, 441).

The mere fact that the reviewing agency may be a court, and may in some respects act judicially, does not destroy its administrative nature for the purposes of the present inquiry.

Porter vs. *Investors Syndicate*, 287 U. S. 346, 347;
First National Bank of Greenville vs. *Gildart, supra* (p. 874).

It is only where the remedy is purely judicial that it need not be pursued.

First National Bank of Greenville vs. *Gildart, supra* (p. 875).

Nor is it material that the proceeding may be by suit in equity instead of by appeal from the administrative order.

Porter vs. *Investors Syndicate, supra* (p. 468).

The character of the proceeding, and therefore the nature of the review, whether administrative or judicial, is determined by the substance and intent of the proceeding and not by its name.

Federal Radio Commission vs. *Nelson Bros. Co.*, 289 U. S. 266, 277.

It makes no difference that the reviewing agency may be a court which in other proceedings acts judicially. If the reviewing court takes the case on the transcript of the proceedings below, and has the power to "modify, alter or revise" the findings below, it is acting administratively and not judicially.

Kansas City Southern Ry. Co. vs. *Cornish*, 65 Fed. (2d) 671, 672.

Such a court is simply "a superior and revising agency" in the administrative field, and, consequently, its decisions are not judicial judgments.

Radio Commission vs. *General Electric Company*, 281 U. S. 464, 467.

A court acquiring jurisdiction by appeal pursuant to statute may be just as much an administrative agency in character as the original administrative body.

Radio Commission vs. *General Electric Company, supra* (pp. 467, 468).

Whether a court on appeal is acting administratively or judicially is fully considered and the test for determining its character in such matters is set forth by the United States Supreme Court in its consideration of the case of *Radio Commission* vs. *General Electric, supra,* and the later case of *Radio Commission* vs. *Nelson Bros. Co., supra.* The Supreme Court in the first of these cases, in passing upon the nature of the reviewing agencies and in determining that such agencies acting in an appellate capacity were administrative and not judicial, based its decision upon the fact that the appeals were taken on the transcript of the proceedings before the original administrative body and that the court was authorized to alter or revise the decision appealed from and enter such judgment as it might deem just. In other words, that its review was not confined to a consideration of matters of law, but as well extended to matters of fact. In the second case, arising after the act had been amended to limit the reviewing courts' power to a consideration of questions of law, and to include a provision that findings of fact by the administrative body should be conclusive on the appeal if supported by substantial evidence, the Supreme Court held the proceeding to be judicial rather than administrative. A reading of these two cases clearly establishes the fact that the question of whether a review is administrative or judicial depends upon whether such review is confined to matters of law or whether it extends to an examination of all phases of the case, including questions of fact, and whether the

reviewing agency may not only affirm or set aside the order appealed from, but as well may modify, alter or revise it.

It is defendants' contention that under Section 18 of the statute (set forth at length in the bill of complaint, p. 11) plaintiffs have a right of appeal to the ordinary for the review of the State Tax Commissioner's determination, and that such review, tested by the rules established in the cases hereinbefore cited, and particularly the last two mentioned, is purely administrative and not judicial.

A right of appeal similar in nature provided by the Missouri Inheritance Tax Act has been held by the United States District Court (W. D. Missouri), and affirmed by the United States Supreme Court on appeal, to afford such an adequate administrative remedy as must be exhausted before resorting to a federal equity court.

> *DePauw University* vs. *Brunk, Treas.*, 53 Fed. (2d) 647, 652, 653; aff'd 285 U. S. 527.

The *per curiam* of the Supreme Court in the *DePauw University Case* affirmed the order below on the ground that there was no jurisdiction in equity and the cases cited, particularly the first two, clearly establish that lack of equity jurisdiction was due to the fact that there was a failure on the part of the taxpayer to exhaust administrative remedies. It might be observed that the review held to be administrative and not judicial was by appeal from the probate court to the circuit court.

It is defendants' claim that the legislature of this state has provided a complete plan for the assessment and collection of inheritance taxes. This plan does not stop with the State Tax Commissioner—the original administrative officer—but extends to the Ordinary, or Prerogative Court, which is constituted a "superior or revising agency." The right of appeal afforded by section 18 of the statute is just

as much a part of the administrative plan and is just as much in the administrative field as the original administrative officer.

The courts of this state have held that the reviewing court (Prerogative) designated by section 18 of the statute is a "legislative agent," or "legislative agency."

> *In re Roebling's Estate*, 91 N. J. Eq., 72, 75, 108 Atl. 359;
> *Bugbee* vs. *Van Cleve*, 99 N. J. Eq. 825, 835, 134 Atl. 646;

which, incidentally, is a binding interpretation on the federal courts.

> *Porter* vs. *Investors Syndicate, supra* (p. 347).

Ordinary Walker in *Bugbee* vs. *Van Cleve, supra*, citing as authority *In re Roebling's Estate, supra*, says (p. 835):

> "* * * Therefore on the authority both of this court and the Court of Errors and Appeals, the proceeding before me is one in the Prerogative Court. Although that court acts in the given case as a *legislative agent*, and the judge thereof is a statutory magistrate."
> (Italics, defendants'.)

Under section 20 the Ordinary is empowered to hear and determine all matters arising under the act. He is not limited to questions of valuation and the amount of the tax, but may also pass upon the question of liability to the tax.

> *In re Budell*, 100 N. J. Eq. 273, 274, 275, 134 Atl. 552.

Appeals to the Prerogative Court are heard on the transcript of the record before the State Tax Commissioner;

In re Pierce's Estate, 89 N. J. Eq. 171, 172, 104 Atl. 298;
In re Bottomley, 92 N. J. Eq. 202, 203, 111 Atl. 605;

and it is the well established practice of that court not only to affirm or set aside the assessment, but to modify, alter or revise it if that course be deemed necessary. For cases of modification see:

In re Moore, 104 N. J. Eq. 400, 145 Atl. 727;
In re Russell, 104 N. J. Eq. 578, 146 Atl. 361;
In re Gould's Estate, 8 N. J. Misc. R. 798, 151 Atl. 743; (affirming the assessment "as corrected by decree of the Vice-Ordinary" reported in 105 N. J. Eq. 598, 148 Atl. 731);
In re O'Neill, 111 N. J. Eq. 378, 162 Atl. 425;
In re Roebling's Estate, 89 N. J. Eq. 163, 104 Atl. 295.

The review by the Prerogative Court afforded plaintiffs by the New Jersey statute appears to be no different than those held to be administrative and not judicial in cases such as:

Radio Comm. vs. *General Electric Co., supra;*
Keller vs. *Potomac Electric Co., supra;*
Porter vs. *Investors Syndicate, supra;*
DePauw University vs. *Brunk, Treas., supra.*

Neither the rule that the burden of proof on such a review is upon the appellant to show clearly wherein the assessment is erroneous,

In re Pierce's Estate, supra (p. 172);
In re Moore, supra (p. 400);

nor the rule that the case will be remanded to the tax commissioner if an attempt is made to introduce new evidence on the appeal,

In re Pierce's Estate, supra (p. 172),

can affect the administrative nature of the proceeding.

Keller vs. *Potomac Electric Co., supra* (p. 440).

And it is not for this court to assume, merely because of the constitutional division of government into three branches: Legislative, Administrative and Judicial (Art. III, N. J. Const.) that the Prerogative Court may not exercise administrative functions ancillary to its judicial duties. The construction of such a constitutional provision is primarily for the state courts; the federal courts being reluctant to pass upon the question. So that, in the absence of decisions of the state courts definitely holding that such powers may not be exercised by a judicial body, federal courts will not assume such to be the fact,

Porter vs. *Investors Syndicate, supra,*

and defendants know of no case in New Jersey precluding the exercise by the Prerogative Court of administrative functions ancillary to its judicial duties.

It is respectfully submitted that the right of review by the Prerogative Court is simply a rounding-out of the entire legislative or administrative scheme for the assessment and collection of inheritance taxes, and is such an administrative remedy as must be exhausted by plaintiffs before they may resort to a federal court.

FILE COPY

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 194. **October Term, 1935.**

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M. D., ARTHUR C. DORRANCE and CAMDEN SAFE DEPOSIT AND TRUST COMPANY, Executors of the Last Will and Testament of JOHN T. DORRANCE, Deceased,

Appellants,

v.

J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey; WILLIAM D. KELLY, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey; FRANK J. MURRAY, Comptroller of the State of New Jersey; WILLIAM H. ALBRIGHT, State Treasurer of the State of New Jersey; and DAVID T. WILENTZ, Attorney General of the State of New Jersey,

Appellees.

Brief Contra Motion to Dismiss.

WILLIAM A. SCHNADER,
JOHN MILTON,
Solicitors for Appellants.

1719 Packard Building,
Philadelphia, Pa.

International, 236 Chestnut St., Philadelphia

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Appellees.

BRIEF CONTRA MOTION TO DISMISS

STATEMENT

In their "Statement in Answer to Appellants' Statement as to Jurisdiction," appellees have included a motion to dismiss.

We should not file this brief, but for the confusing statements made by appellees regarding the nature, effect, and finality of the proceedings before the New Jersey authorities contesting the New Jersey inheritance tax assessment.

Accordingly, in this brief we shall endeavor to establish:

1. That no proceeding has as yet been instituted by New Jersey or by the agents of New Jersey to collect inheritance tax on the intangible personal property of the Dorrance estate.

2. That the proceedings thus far had in New Jersey have been administrative and not judicial.

3. That regardless of whether the proceedings have been administrative or judicial, they have not eventuated in a judgment in favor of New Jersey for tax due by the Dorrance estate upon which execution could issue.

4. That, assuming the action of the Supreme Court of New Jersey to be judicial rather than administrative, the action of that court is not a final judgment which bars proceedings in a Federal Court between the same parties involving the same questions.

5. That this case comes within Section 266 of the Judicial Code.

6. That neither Section 265 of the Judicial Code nor a plea of res judicata deprives the court below of jurisdiction to grant the injunction prayed for in the bill of complaint.

ARGUMENT.

I.

NO ACTION HAS AS YET BEEN INSTITUTED BY THE NEW JERSEY AUTHORITIES TO COLLECT INHERITANCE TAX FROM THE DORRANCE ESTATE.

Paragraph 36 of the Amended Bill of Complaint reads as follows:

> "43. From the decree of the Prerogative Court, executors obtained a writ of certiorari from the Supreme Court of the State of New Jersey, which on February 11, 1935, sustained the decree of the Prerogative Court. The action of the Supreme Court is not final, being subject to judicial review by the Court of Errors and Appeals. **And the tax which defendants demand cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or a statutory proceeding in the Prerogative Court of New Jersey.**"

In their Amendment to Answer, appellees say, *inter alia,* in reply to paragraph 36 of the Amended Bill of Complaint

> "**They admit that said tax cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or by a statutory proceeding in the Prerogative Court of New Jersey;** further answering they say that said statutory proceeding is as follows:
>
> " '21. If it shall appear to the State Tax Commissioner that any tax which has accrued under this act has not been paid according to law said

Commissioner shall report such fact, in writing, to the register of the Prerogative Court, and said register shall issue a citation citing the persons or corporations interested in the property liable to said tax to appear before the Ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid; the service of such citation and the subsequent proceedings had thereon shall conform to the practice prevailing in the Prerogative Court. Upon the making of any decree the register of the Prerogative Court shall, upon the request of the State Tax Commissioner, furnish one or more copies of said decree, and the same shall be docketed and filed by the clerk of the Supreme Court, or by the county clerk of any county in this State, upon the request of the State Tax Commissioner, and the same shall have the same effect as a lien by judgment, and execution shall issue thereon according to the rules and practice appertaining to other judgments docketed and filed with said respective clerks.

"'22. Whenever the State Tax Commissioner shall have reason to believe that any tax is due and unpaid under this act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, he shall notify the Attorney-General of this State, in writing, of such failure to pay such tax, and the said Attorney-General, when so notified, if he have probable cause to believe that a tax is due and unpaid, shall prosecute the proceeding before the Ordinary of this State, as provided for in section twenty-one of this act, and the State Treasurer shall, on the warrant of the Comptroller, and the certification of the State Tax Commissioner, pay all the expenses of said proceeding.'"

Thus the appellees have definitely admitted by their answer that as yet they have not instituted either of the alternative forms of action necessary to collect transfer inheritance tax from the Dorrance Estate.

Hitherto the only litigation in New Jersey relating to the tax in question has been the executors' (the appellants here) appeal from the assessment of tax made by the State Tax Commissioner.

The procedure open to the executors under the statutes of New Jersey was as follows:

(1) The executors had a right to appeal to the Ordinary from the assessment made by the State Tax Commissioner. The Ordinary embodied his action on the appeal in a decree filed in the Prerogative Court.

(2) The Ordinary having sustained the assessment, the executors had a right to petition the Supreme Court of New Jersey for a writ of certiorari bringing up for review the action of the Ordinary.

(3) The Supreme Court having sustained the assessment, the executors now have a right to take an appeal to the Court of Errors and Appeals.

Both in the proceedings before the Ordinary and before the Supreme Court of New Jersey, the executors were the plaintiffs or prosecutors, and the State Tax Commissioner was the defendant or respondent.

The only result of the litigation thus far has been that the assessment made by the State Tax Commissioner has been sustained.

The State of New Jersey has not been a party to the proceedings, nor have the proceedings eventuated in a judg-

ment in favor of the State or its collecting officer and against the executors.

As appellees admit, to convert the assessment into an enforceable judgment, an independent action must be instituted. That action may be either an action of debt or what is denominated a statutory proceeding in the Prerogative Court.

Such action of debt or such statutory proceeding in the Prerogative Court is entirely independent of the executors' appeal from the assessment.

The executors' appeal from the assessment was a proceeding instituted by the executors. The action of debt or the statutory proceeding in the Prerogative Court would be an action instituted **against** the executors.

In this case the time has not expired within which the executors may as a matter of right appeal from the decision of the Supreme Court of New Jersey sustaining the assessment, to the Court of Errors and Appeals. That time will not expire until February 11, 1936.

At the moment there is no litigation actually pending in New Jersey regarding either the assessment or the collection of the tax, but the executors have signified their intention of taking an appeal to the Court of Errors and Appeals, should that step be necessary to protect the interests of the estate.

It seems clear that an injunction to restrain the collection of the tax could not under any circumstances be regarded as a stay of proceedings in a State court within the meaning of Section 265 of the Judicial Code. In the only proceedings which have as yet been instituted, the

executors were the moving parties; and if those proceedings are carried further, the executors must take the next step. An injunction against the appellees will not prevent the executors from taking their appeal to the Court of Errors and Appeals.

Of course, every injunction restraining the collection of a tax prevents litigation from being commenced to collect it. But Section 265 of the Judicial Code has never been construed as preventing the issuance of such an injunction. That section forbids Federal interference with pending State litigation; nothing more.

What we have said is true even though it were to be conceded that the action both of the Ordinary and of the Supreme Court of New Jersey in reviewing the State Tax Commissioner's assessment was judicial in character.

II.

THE PROCEEDINGS HERETOFORE HAD IN THE NEW JERSEY COURTS HAVE BEEN ADMINISTRATIVE AND NOT JUDICIAL.

Clearly, if the proceedings thus far had in the New Jersey courts were administrative and not judicial, the appellants had a right at their conclusion to ask for relief in the District Court of the United States. See **Prentis** v. **Atlantic Coast Line Company**, 211 U. S. 210 (1908); **Bacon** et al. v. **Rutland R. R. Co.**, 232 U. S. 134 (1914); **Pacific Telephone & Telegraph Company** v. **Kuykendall**, 265 U. S. 196 (1924).

In **Miller** v. **McCutcheon**, 175 Atl. 155, (1934), the New Jersey Court of Errors and Appeals said in discussing the function of the Ordinary in reviewing tax assessments:

". . . The Ordinary, in exercising the power conferred by the statute (supra) to hear and determine tax questions of this character, is a statutory agent only . . ."

In **Nevin** et al. v. **Martin** et al., now pending before the District Court of the United States for the District of New Jersey, In Equity No. 4805, the present Attorney General of New Jersey filed an exhaustive brief in support of his position that the action of the Ordinary in reviewing assessments made by the State Tax Commissioner was purely administrative and not judicial. We print as an appendix hereto, the exact language used by the Attorney General in pressing this point.

It can scarcely be argued that the action of "a statutory agent only" may be regarded as judicial. Certainly that is not the language which the highest court of any state would employ to characterize a judicial officer in the performance of a judicial duty. The position of the Attorney General of New Jersey in the **Nevin Case**, that in reviewing tax assessments the Ordinary's action is purely administrative and not judicial, is sound. His position in the present case, that the Ordinary's action is wholly judicial and not administrative, is neither consistent nor sound.

We now reach the question: What is the nature of the review by the Supreme Court of New Jersey of the action of the Ordinary in tax cases such as this?

In reviewing tax assessments the Supreme Court of New Jersey functions under Section 11 of the New Jersey Certiorari Act of 1903 as amended by the Act of April 12, 1907 P. L. 95.

That act provides that:

"**In all cases of writs of certiorari** now pending or hereafter **brought to remove any tax or assessment,** or other order or proceeding touching any local or public improvement, or to review the proceedings of any special statutory tribunal, or to review the suspension, dismissal, retirement or reduction in rank of any person holding an office or position, state, county or municipal, from which he is removable only for cause and after trial, **the courts shall determine disputed questions of fact, as well as of law, and inquire into the facts by depositions taken on notice, or in such other manner as is according to the practice of the court; provided, either party may use the testimony taken before the tribunal, board or officer whose action is being reviewed which testimony shall be considered by the court the same as if it had been taken by deposition on notice and either party may take additional testimony. The court may reverse or affirm, in whole or in part, such tax or assessment** or other order or proceeding, finding or determination, suspension, dismissal, retirement or reduction in rank **reviewed.**"

This act has been sustained as constitutional. **Royal Mfg. Co.** v. **City of Rahway,** 75 N. J. Law 416 (1907).

In **Trenton & Mercer County Traction Corporation** v. **Mercer County Board of Taxation,** 92 N. J. Law 398 (1918), the Court of Errors and Appeals reversed the action of the Supreme Court of New Jersey in a tax case on the ground that it confined its review of the facts to a consideration of the question whether there was any evidence to support the findings below. Speaking for the court Judge Swayze said:

"The Supreme Court took too narrow a view of its functions in this case. It held that the judgment of the county board of taxation was not unreasonably

or illegally reached and was supportable upon the facts and the figures adduced before it. This involved merely a determination that there was no erroneous legal principle shown to have been adopted by the county board, and that there was evidence to support its finding. But this determination was not a compliance with the mandate of the Tax Act or of the Certiorari Act . . .

"Section 11 of the Certiorari Act as amended in 1907 (P. L. 95; 1 C. S. 405) requires the Supreme Court to determine disputed questions of fact in tax cases as well as in other cases therein set forth. . . . In the present case the Supreme Court failed to make an independent determination of facts, and contented itself with finding that there was a legal basis for the result reached by the county board of taxation whether or not that result was right in fact. This error makes it necessary to reverse the judgment and remit the record to the Supreme Court in order that it may find the facts."

See also similar language in the opinion of the Court of Errors and Appeals in **Gibbs** v. **State Board of Taxes and Assessment,** 101 N. J. L. 371 (1925).

That the Supreme Court of New Jersey is established by the Constitution of New Jersey does not to any degree determine the question whether its action in reviewing such assessments is administrative or judicial. Nor does the procedure for bringing up assessments for review. As a matter of fact the Prerogative Court,—in which the Ordinary files his decree,—is likewise established by the Constitution of New Jersey.

This Court has held in the following cases that courts created by State Constitutions were exercising administrative rather than judicial functions:

Prentis v. **Atlantic Coast Line Company**, 211 U. S. 210 (1908);

Oklahoma Natural Gas Company v. **Russell** et al., 261 U. S. 290 (1923).

In the cases just cited the procedure by which the courts were authorized to review the actions of inferior administrative agencies was by appeal.

And this court has held that courts were exercising administrative functions even though their jurisdiction was invoked by bill in equity, in:

Keller v. **Potomac Electric Co.**, 261 U. S. 428 (1922); **Radio Commission** v. **General Electric Co.**, 281 U. S. 464 (1930); and

Porter v. **Investors Syndicate**, 286 U. S. 461 (1932).

We submit that on this point the present case parallels **Radio Commission** v. **General Electric Company**, 281 U. S. 464 (1930). And the New Jersey procedure is quite different from the Pennsylvania procedure which this Court said was judicial, in **City Bank Farmers Trust Co.** v. **Schnader**, et al., 291 U. S. 24 (1934).

In the **Radio Commission Case** the court was authorized to examine the record before the administrative tribunal,—the Radio Commission,—to take additional evidence upon such terms and conditions as it might deem proper, to hear, review and determine the appeal upon said record and evidence, and to alter and revise the decision appealed from and enter such judgment as to it might seem just.

In this case the Supreme Court of New Jersey under the Certiorari Act was authorized to determine disputed questions of fact as well as of law, to inquire into the facts

by deposition or in such other manner as is in accordance with the practice of the court, and to reverse or affirm in whole or in part the assessment reviewed.

Unlike the procedure in Pennsylvania to which this court referred in the **Schnader Case**, the New Jersey procedure does not bring the State into court as plaintiff nor make the taxpayer defendant in the proceeding. The case is not tried as an ordinary appeal before the Supreme Court of New Jersey. It is a review on certiorari under the express terms of the New Jersey Certiorari Act we have quoted.

As we have previously stated, under the New Jersey procedure the action in the Supreme Court was between the executors of the Dorrance Estate as prosecutors, and the State Tax Commissioner as respondent. At its conclusion there was not a judgment in favor of the State of New Jersey and against the executors. Such a judgment, we repeat, could be obtained only by the institution of an action of debt, or of a new statutory proceeding in the Prerogative Court in which the decree of the court could be entered as a judgment against the taxpayers.

III.

RELIEF BY THE DISTRICT COURT OF THE UNITED STATES IS NOT BARRED BY THE DECISION OF THE SUPREME COURT OF NEW JERSEY.

If, as we contend, the Supreme Court of New Jersey acts administratively in reviewing tax assessments, obviously its decision cannot be pleaded as res judicata in an action in equity in a Federal court.

But even if the action of the Supreme Court of New Jersey were judicial and not administrative, nevertheless

its decision could not under the circumstances of this case be pleaded as res judicata.

The executors of the Dorrance Estate may as a matter of right appeal from the decision of the Supreme Court of New Jersey to the Court of Errors and Appeals. Their time for taking an appeal does not expire until February 11, 1936. They have stated their intention of taking an appeal unless the action in the Federal court renders such an appeal unnecessary. See paragraph 40 of plaintiff's Amended Bill of Complaint, the concluding sentences of which are,

> "Under the statutes of New Jersey, plaintiffs may take their appeal to the Court of Errors and Appeals at any time prior to February 11, 1936. Plaintiffs will take such appeal prior to that date, unless in the meantime this action renders such appeal unnecessary."

We submit that there is a marked difference between the application of the doctrine of res judicata as between the courts of a State, and as between State and Federal courts.

Necessarily the judgment of a lower court of a State may be pleaded as a bar to the trial of the same issue between the same parties in another lower court of the same State, even though an appeal is pending to an appellate court of the State.

But the right of a party to invoke the jurisdiction of a Federal court cannot be barred by a plea of res judicata, unless the pleaded judgment is either that of the State court of last resort and the period for appeal or petition for certiorari (in proper cases) to this Court has expired, or the judgment of a lower State court in which the parties have acquiesced without resort to the appellate

court. This rule was clearly stated by Judge Simonton in **Eastern Building & Loan Association of Syracuse** v. **Welling**, 103 Fed. 352 (D. S. C. Car. 1900), 355.

This Court has repeatedly spoken of "a final judgment" in dealing with the effect of a plea of res judicata.

In **Grubb** v. **Public Utilities Commission**, 281 U. S. 470 (1930), Mr. Justice Van Devanter, at page 476, spoke of a final judgment in the State court as barring future proceedings in a Federal court. At page 475 in stating the facts of the case, he said:

> "After a hearing in which all of the parties participated the state court rendered a judgment sustaining and affirming the Commission's order in its entirety. 119 O. S. 264. **No effort was made to have that judgment reviewed by this Court, and after the three months allotted for applying for such a review had elapsed,** the defendants in the suit in the District Court, . . . interposed answers setting up the judgment as a bar to the further prosecution of the suit . . ."

In **American Surety Company** v. **Baldwin**, 287 U. S. 156 (1932), Mr. Justice Brandeis, at page 164, spoke of proceedings taken in the State court "which ripened into a final judgment," constituting res judicata.

In this case the appellants have not exhausted the State procedure and have given notice of their intention to take a further appeal to which they are entitled as a matter of right.

Thus the decision of the Supreme Court of New Jersey even though it be regarded as judicial rather than administrative is not a bar to the prosecution of an action in the court below by the appellants.

IV.

THIS CASE COMES WITHIN SECTION 266 OF THE JUDICIAL CODE.

In their motion to dismiss this appeal, appellees state dogmatically that this case does not come within Section 266 of the Judicial Code.

We submit that the only difference between this case and **City Bank Farmers Trust Co.** v. **Schnader**, 291 U. S. 24 (1934) are (1) that this action was brought after the State taxing officer had made his assessment and that assessment had been reviewed by the Ordinary and the Supreme Court of New Jersey, whereas in the **City Bank Farmers Trust Company Case**, a Federal action was brought before the State taxing officer had concluded his assessment; and (2) that the present case involves the situs of **intangible** personal property for inheritance tax purposes, whereas the **City Bank Farmers Trust Company Case** involved the situs of **tangible** personal property for inheritance tax purposes.

In each case the statute in question was not alleged to be unconstitutional per se. It was alleged to be unconstitutional only because if applied to certain facts, the statute would authorize the taking of property of an estate without due process of law. This has repeatedly been held to be such a challenge of the constitutionality of an act as comes within Section 266 of the Judicial Code. See **Sterling** et al v. **Constantin**, 287 U. S. 378 (1932).

If the allegations of the bill of complaint in **City Bank Farmers Trust Company** v. **Schnader** brought that controversy under Section 266 of the Judicial Code, as this Court held they did, then the allegations of the bill of complaint in the present case bring this controversy within Section 266 of the Judicial Code.

V.

THIS CASE PRESENTS A NOVEL PROBLEM.

We have pleaded the judgment of the Supreme Court of Pennsylvania, subjecting the Dorrance estate to Pennsylvania transfer inheritance tax on the estate's intangible personal property.

The Ordinary of New Jersey held that a judgment for inheritance tax is an action in rem. His decision was affirmed in a per curiam opinion by the Supreme Court of New Jersey.

If such a judgment is in rem it would seem to be binding upon all parties, whether or not they appeared in the particular litigation in which the judgment was rendered.

We have also averred notice to the New Jersey authorities of the pendency of the Pennsylvania litigation, the appearance therein as a witness of one of the present appellees, and an invitation by the appellants to the New Jersey authorities to participate in the Pennsylvania litigation.

If we have presented a Federal question in this case,—as we are confident we have,—the situation is this:

Is a Federal court bound to accept as a finality the judgment of a court of intermediate appeal in New Jersey, holding the decedent domiciled in that State, notwithstanding the judgment of the Pennsylvania court of last resort that the decedent died domiciled in Pennsylvania?

Or, in such a case, do the usual rules of comity between State and Federal courts give way, leaving the Federal court free to ascertain the facts and reach its conclusion independently of the prior decision of either State court?

Or, if judgments in such cases be in rem, is the Court bound, upon taking jurisdiction, to treat the Pennsylvania judgment as final and binding upon the world?

We believe that the situation here presented has never come before this Court.

VI.

CONCLUSION.

We believe that appellees' motion to dismiss this appeal should be denied.

Respectfully submitted,

WM. A. SCHNADER,
JOHN MILTON,
Solicitors for Appellants.

APPENDIX

Reproduction of Cover Page and
Pages 36 to 42 of the

BRIEF OF THE APPELLEES AS TAX COLLECTING OFFICERS OF THE STATE OF NEW JERSEY

in

Edwin C. Nevin, Executor etc., Plaintiffs, vs. **J. H. Thayer Martin,** et al., Defendants, in the United States District Court for the District of New Jersey, Equity No. 4805, Now Pending.

United States District Court

DISTRICT OF NEW JERSEY.

EQUITY No. 4805

EDWIN C. NEVIN, Executor of the last will and testament of Walter Ross McShea, dec'd, et als.,

Plaintiffs,

vs.

J. H. THAYER MARTIN, State Tax Commissioner, etc., et als.,

Defendants.

On Bill for Injunction.

On Motion to Dismiss Bill and Dissolve Temporary Order.

BRIEF OF DEFENDANTS

DAVID T. WILENTZ,
Attorney-General of New Jersey,
Attorney for Defendants,

WILLIAM A. MOORE,
Of Special Counsel.

POINT IV

PLAINTIFFS HAVE NOT EXHAUSTED THEIR ADMINISTRATIVE REMEDIES IN THE COURTS OF THIS STATE

An adequate administrative (sometimes called "legislative") remedy will always defeat federal jurisdiction:

First National Bank vs. *Weld Co.*, 264 U. S. 450;
Gorham Mfg. Co. vs. *Tax Commission*, 266 U. S. 265;
Porter vs. *Investors Syndicate*, 286 U. S. 461;
Keller vs. *Potomac Electric Company*, 261 U. S. 428;
Prentis vs. *Atlantic Coast Line*, 211 U. S. 210.

A statutory right of review of administrative action, where the reviewing agency may "set aside, modify or confirm" the action below, is an administrative remedy which must be exhausted before resort may be had to a federal equity court.

Porter vs. *Investors Syndicate, supra* (p. 468);
Keller vs. *Potomac Electric Company, supra* (pp. 440, 441).

The mere fact that the reviewing agency may be a court, and may in some respects act judicially, does not destroy its administrative nature for the purposes of the present inquiry.

Porter vs. *Investors Syndicate*, 287 U. S. 346, 347;
First National Bank of Greenville vs. *Gildart, supra* (p. 874).

It is only where the remedy is purely judicial that it need not be pursued.

First National Bank of Greenville vs. *Gildart, supra* (p. 875).

Nor is it material that the proceeding may be by suit in equity instead of by appeal from the administrative order.

Porter vs. *Investors Syndicate, supra* (p. 468).

The character of the proceeding, and therefore the nature of the review, whether administrative or judicial, is determined by the substance and intent of the proceeding and not by its name.

Federal Radio Commission vs. *Nelson Bros. Co.*, 289 U. S. 266, 277.

It makes no difference that the reviewing agency may be a court which in other proceedings acts judicially. If the reviewing court takes the case on the transcript of the proceedings below, and has the power to "modify, alter or revise" the findings below, it is acting administratively and not judicially.

Kansas City Southern Ry. Co. vs. *Cornish*, 65 Fed. (2d) 671, 672.

Such a court is simply "a superior and revising agency" in the administrative field, and, consequently, its decisions are not judicial judgments.

Radio Commission vs. *General Electric Company*, 281 U. S. 464, 467.

A court acquiring jurisdiction by appeal pursuant to statute may be just as much an administrative agency in character as the original administrative body.

Radio Commission vs. *General Electric Company, supra* (pp. 467, 468).

Whether a court on appeal is acting administratively or judicially is fully considered and the test for determining its character in such matters is set forth by the United States Supreme Court in its consideration of the case of *Radio Commission* vs. *General Electric, supra,* and the later case of *Radio Commission* vs. *Nelson Bros. Co., supra.* The Supreme Court in the first of these cases, in passing upon the nature of the reviewing agencies and in determining that such agencies acting in an appellate capacity were administrative and not judicial, based its decision upon the fact that the appeals were taken on the transcript of the proceedings before the original administrative body and that the court was authorized to alter or revise the decision appealed from and enter such judgment as it might deem just. In other words, that its review was not confined to a consideration of matters of law, but as well extended to matters of fact. In the second case, arising after the act had been amended to limit the reviewing courts' power to a consideration of questions of law, and to include a provision that findings of fact by the administrative body should be conclusive on the appeal if supported by substantial evidence, the Supreme Court held the proceeding to be judicial rather than administrative. A reading of these two cases clearly establishes the fact that the question of whether a review is administrative or judicial depends upon whether such review is confined to matters of law or whether it extends to an examination of all phases of the case, including questions of fact, and whether the

reviewing agency may not only affirm or set aside the order appealed from, but as well may modify, alter or revise it.

It is defendants' contention that under Section 18 of the statute (set forth at length in the bill of complaint, p. 11) plaintiffs have a right of appeal to the ordinary for the review of the State Tax Commissioner's determination, and that such review, tested by the rules established in the cases hereinbefore cited, and particularly the last two mentioned, is purely administrative and not judicial.

A right of appeal similar in nature provided by the Missouri Inheritance Tax Act has been held by the United States District Court (W. D. Missouri), and affirmed by the United States Supreme Court on appeal, to afford such an adequate administrative remedy as must be exhausted before resorting to a federal equity court.

DePauw University vs. *Brunk, Treas.*, 53 Fed. (2d) 647, 652, 653; aff'd 285 U. S. 527.

The *per curiam* of the Supreme Court in the *DePauw University Case* affirmed the order below on the ground that there was no jurisdiction in equity and the cases cited, particularly the first two, clearly establish that lack of equity jurisdiction was due to the fact that there was a failure on the part of the taxpayer to exhaust administrative remedies. It might be observed that the review held to be administrative and not judicial was by appeal from the probate court to the circuit court.

It is defendants' claim that the legislature of this state has provided a complete plan for the assessment and collection of inheritance taxes. This plan does not stop with the State Tax Commissioner—the original administrative officer—but extends to the Ordinary, or Prerogative Court, which is constituted a "superior or revising agency." The right of appeal afforded by section 18 of the statute is just

as much a part of the administrative plan and is just as much in the administrative field as the original administrative officer.

The courts of this state have held that the reviewing court (Prerogative) designated by section 18 of the statute is a "legislative agent," or "legislative agency."

In re Roebling's Estate, 91 N. J. Eq., 72, 75, 108 Atl. 359;
Bugbee vs. *Van Cleve*, 99 N. J. Eq. 825, 835, 134 Atl. 646;

which, incidentally, is a binding interpretation on the federal courts.

Porter vs. *Investors Syndicate, supra* (p. 347).

Ordinary Walker in *Bugbee* vs. *Van Cleve, supra*, citing as authority *In re Roebling's Estate, supra*, says (p. 835):

> "* * * Therefore on the authority both of this court and the Court of Errors and Appeals, the proceeding before me is one in the Prerogative Court. Although that court acts in the given case as a *legislative agent*, and the judge thereof is a statutory magistrate."
> (Italics, defendants'.)

Under section 20 the Ordinary is empowered to hear and determine all matters arising under the act. He is not limited to questions of valuation and the amount of the tax, but may also pass upon the question of liability to the tax.

In re Budell, 100 N. J. Eq. 273, 274, 275, 134 Atl. 552.

Appeals to the Prerogative Court are heard on the transcript of the record before the State Tax Commissioner;

In re Pierce's Estate, 89 N. J. Eq. 171, 172, 104 Atl. 298;
In re Bottomley, 92 N. J. Eq. 202, 203, 111 Atl. 605;

and it is the well established practice of that court not only to affirm or set aside the assessment, but to modify, alter or revise it if that course be deemed necessary. For cases of modification see:

In re Moore, 104 N. J. Eq. 400, 145 Atl. 727;
In re Russell, 104 N. J. Eq. 578, 146 Atl. 361;
In re Gould's Estate, 8 N. J. Misc. R. 798, 151 Atl. 743; (affirming the assessment "as corrected by decree of the Vice-Ordinary" reported in 105 N. J. Eq. 598, 148 Atl. 731);
In re O'Neill, 111 N. J. Eq. 378, 162 Atl. 425;
In re Roebling's Estate, 89 N. J. Eq. 163, 104 Atl. 295.

The review by the Prerogative Court afforded plaintiffs by the New Jersey statute appears to be no different than those held to be administrative and not judicial in cases such as:

Radio Comm. vs. *General Electric Co., supra;*
Keller vs. *Potomac Electric Co., supra;*
Porter vs. *Investors Syndicate, supra;*
DePauw University vs. *Brunk, Treas., supra.*

Neither the rule that the burden of proof on such a review is upon the appellant to show clearly wherein the assessment is erroneous,

In re Pierce's Estate, supra (p. 172);
In re Moore, supra (p. 400);

nor the rule that the case will be remanded to the tax commissioner if an attempt is made to introduce new evidence on the appeal,

In re Pierce's Estate, supra (p. 172),

can affect the administrative nature of the proceeding.

Keller vs. *Potomac Electric Co., supra* (p. 440).

And it is not for this court to assume, merely because of the constitutional division of government into three branches: Legislative, Administrative and Judicial (Art. III, N. J. Const.) that the Prerogative Court may not exercise administrative functions ancillary to its judicial duties. The construction of such a constitutional provision is primarily for the state courts; the federal courts being reluctant to pass upon the question. So that, in the absence of decisions of the state courts definitely holding that such powers may not be exercised by a judicial body, federal courts will not assume such to be the fact,

Porter vs. *Investors Syndicate, supra,*

and defendants know of no case in New Jersey precluding the exercise by the Prerogative Court of administrative functions ancillary to its judicial duties.

It is respectfully submitted that the right of review by the Prerogative Court is simply a rounding-out of the entire legislative or administrative scheme for the assessment and collection of inheritance taxes, and is such an administrative remedy as must be exhausted by plaintiffs before they may resort to a federal court.

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IN THE

Supreme Court of the United States

No. 193. October Term, 1935.

ELINOR DORRANCE HILL,

Appellant,

v.

J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey; WILLIAM D. KELLY, State Supervisor, Inheritance Tax Bureau, of the State of New Jersey; FRANK J. MURRAY, Comptroller of the State of New Jersey; WILLIAM H. ALBRIGHT, State Treasurer of the State of New Jersey; and DAVID T. WILENTZ, Attorney General of the State of New Jersey,

Appellees.

No. 194. October Term, 1935.

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M.D., ARTHUR C. DORRANCE and CAMDEN SAFE DEPOSIT AND TRUST COMPANY, Executors of the Last Will and Testament of JOHN T. DORRANCE, Deceased,

Appellants,

v.

J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey, et al.,

Appellees.

APPELLANTS' BRIEF.

Appeals From the District Court of the United States for the District of New Jersey.

WILLIAM A. SCHNADER,
JOHN MILTON,
Attorneys for Appellants.

International, 236 Chestnut St., Philadelphia

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IN THE

Supreme Court of the United States.

No. 193. October Term, 1935.

ELINOR DORRANCE HILL, *Appellant*,

v.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY; WILLIAM D. KELLY, STATE SUPERVISOR, INHERITANCE TAX BUREAU, OF THE STATE OF NEW JERSEY; FRANK J. MURRAY, COMPTROLLER OF THE STATE OF NEW JERSEY; WILLIAM H. ALBRIGHT, STATE TREASURER OF THE STATE OF NEW JERSEY; AND DAVID T. WILENTZ, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, *Appellees*.

No. 194. October Term, 1935.

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M.D., ARTHUR C. DORRANCE AND CAMDEN SAFE DEPOSIT AND TRUST COMPANY, EXECUTORS OF THE LAST WILL AND TESTAMENT OF JOHN T. DORRANCE, DECEASED, *Appellants*,

v.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY, ET AL., *Appellees*.

APPELLANTS' BRIEF.

REFERENCE TO OFFICIAL REPORT OF OPINION OF COURT BELOW.

The opinion of the court below has not been reported.

STATEMENT AS TO JURISDICTION.

Appellants complied with paragraph 1, Rule 12, and respectfully refer to the statements as to jurisdiction filed in compliance therewith.

STATEMENT OF THE CASE.

This brief is in support of two appeals from the action of the District Court of the United States for the District of New Jersey, consisting of three judges (Circuit Court Judges Woolley and Davis and District Judge Avis), refusing an interlocutory injunction against the officers of the State of New Jersey charged by law with the duty of collecting transfer inheritance tax. The injunction was refused for want of jurisdiction to grant it.

In one case the plaintiffs were the executors of the will of Dr. John T. Dorrance, deceased. In the other case the plaintiff was a daughter of Dr. Dorrance, suing in her own behalf.

The purpose of the suits was to prevent the collection of transfer inheritance tax on the intangible personal property of the estate of Dr. Dorrance.

The theory of the cases is:

(a) That if the New Jersey officers,—the appellees here,—so construe the New Jersey Inheritance Tax Act of April 20, 1909, its amendments and supplements, as to authorize them to collect transfer inheritance tax upon the intangible personal property of the estate of Dr. Dorrance, it is unconstitutional,—the Act would authorize the collection of transfer inheritance tax on intangible personal property which does not have a situs in New Jersey because the decedent, prior to his death, had established his dwelling place and family home in another State without any present intention of not residing there indefinitely; and

(b) If the New Jersey Transfer Inheritance Tax cannot properly be so construed, the defendants below threaten to collect transfer inheritance tax on the intangible personal property of the Dorrance Estate without warrant of law.

The tax which appellees threaten to collect exceeds $12,000,000; and appellees claim interest on this amount at the rate of ten per centum per annum from September 21, 1931 (R. 11).

The estate of Dr. Dorrance, when these suits were filed, had already been compelled to pay to the Commonwealth of Pennsylvania transfer inheritance tax on the transfer of the same property, in the amount of $14,394,-698.88, with interest in the amount of $104,278.03, and to post a bond in the amount of $4,000,000 covering such further payment as may be due to Pennsylvania when the amount of the Federal estate tax has been finally determined (R. 10). (The amount of the Pennsylvania tax is eighty per centum of the amount of the Federal tax. The amount of the Federal Tax had not been finally determined. Subsequent to the filing of these suits the amount of the Federal estate tax was finally determined, and a further payment of tax was made by the estate to Pennsylvania.) See **Dorrance's Estate**, 309 Pa. 151 (1932), cert. denied 287 U. S. 660 (1932) and 288 U. S. 617 (1933).

The executors vigorously contested Pennsylvania's right to impose and collect the tax (R. 8-10); and the New Jersey tax assessment was suspended pending the final outcome of the Pennsylvania litigation (R. 10).

After the Supreme Court of Pennsylvania held that Dr. Dorrance was domiciled in Pennsylvania at the time of

his death, the New Jersey State Tax Commissioner again assessed an inheritance tax upon the transfer of the intangible personal property of his estate (R. 10), and thereupon the executors of Dr. Dorrance's will proceeded to contest the New Jersey assessment (R. 11-13).

They took the following steps:

(1) They appealed to the Ordinary, from the assessment made by the State Tax Commissioner (R. 11). The Ordinary is the judge of the Prerogative Court. This appeal is permitted by Section 18 of the Transfer Inheritance Tax Act. Heretofore the New Jersey authorities have regarded such an appeal as a part of the administrative procedure; and the New Jersey courts have described the Ordinary as a "legislative agent" for reviewing tax assessments.

(2) The Ordinary having sustained the assessment, the executors obtained from the Supreme Court of New Jersey, a writ of certiorari to review the Ordinary's decision (R. 11). We take the position that this review is also administrative in character, notwithstanding the fact that, like the preceding step, it must be taken in a court.

(3) After the Supreme Court sustained the assessment (R. 11), these actions were brought in the District Court of the United States for the District of New Jersey, before a three-judge court.

The executors have a right to appeal to the New Jersey Court of Errors and Appeals, from the decision of the Supreme Court (R. 11). They intend to exercise this right unless the present proceedings render such appeal unnecessary (R. 12).

Dr. John T. Dorrance died at Cinnaminson, New Jersey, on September 21, 1930, and was buried in West Laurel Hill Cemetery, in Philadelphia, Pennsylvania (R. 3). His will required his executors to probate it in New Jersey or forfeit their rights to serve as executors (R. 22, 128). They probated the will on October 2, 1930, in the office of the Surrogate of Burlington County, New Jersey (R. 4).

After the Supreme Court of Pennsylvania held that Dr. Dorrance was domiciled in Pennsylvania, the executors of his will on April 23, 1933, filed a petition with the Surrogate of Burlington County praying him to revoke the order of probate and the letters testamentary granted thereon. That petition is still pending (R. 4).

Shortly after that petition was filed,—on May 12, 1933,—the State Tax Commissioner of New Jersey,—one of the appellees,—filed in the Orphans' Court of Burlington County, New Jersey, a petition praying the removal of the executors and the substitution of the State Treasurer of New Jersey in their stead. That petition also, is still pending (R. 4).

It was because of the pendency of these petitions, that the appellant Elinor Dorrance Hill brought an independent suit in the court below (R. 5). Between her and the appellees there is diversity of citizenship (R. 3).

The three-judge court held that because of the proceedings in the New Jersey courts between the executors of the will of Dr. Dorrance and the State Tax Commissioner of New Jersey,—one of the appellees,—in which the executors challenged the assessment of the tax in question, Section 265 of the Judicial Code prevented the court from en-

joining the collection of the tax at the suit of the executors; and that the appellant Hill was in privity with the executors, and could not, for the same reason, have injunctive relief (R. 221-230).

Thereupon these appeals were taken. Pending their determination, the three-judge court granted a temporary injunction (R. 2).

In order to sustain their position, we conceive it to be necessary for appellants:

(1) To make it clear that the injunctions they seek are not forbidden by Section 265 of the Judicial Code;

(2) To show that their pleadings and injunction affidavits present a prima facie case; and

(3) As the appellees, in the court below, pleaded res judicata, to show that that plea is not sustainable.

To do this, many facts set forth in the pleadings and injunction affidavits, must be presented to the Court. We shall state, as briefly as we can, the facts (1) as to Dr. Dorrance's domicile, and (2) as to the New Jersey proceedings.

In their bills of complaint, the plaintiffs,—appellants here,—also rely upon the full faith and credit clause of the Constitution of the United States.

The entire record of the Pennsylvania proceedings, including the judgment of the Supreme Court of Pennsylvania in favor of the Commonwealth and against the executors of Dr. Dorrance's will, was offered in evidence before the State Tax Commissioner without objection by any of the appellees (R. 10, 44).

The details of the Pennsylvania proceedings appear at R. 8, 10, 22, 23, 497 and 499.

Facts As to Domicile of Dr. Dorrance.

According to the averments of the bills of complaint (R. 2, 493), plaintiffs' injunction affidavits (R. 17, 32), and plaintiffs' reply affidavits (R. 157-221):

John T. Dorrance was born at Bristol, Pennsylvania, on November 11, 1873 (R. 5).

Until he was twenty-three years of age, he lived in Pennsylvania except when in attendance at college and university. At age twenty-three he entered the employ of Joseph Campbell Preserve Company of Camden, New Jersey, and resided in Camden (R. 5).

He was married on August 18, 1906. Until the latter part of 1907 he and his wife lived in Camden, New Jersey. They then moved to Philadelphia, Pennsylvania, where they resided until 1911 when they established their home at Cinnaminson, New Jersey, in a property owned by and leased from Campbell Soup Company and known as "Pomona Farms" (R. 5).

In 1911 Dr. Dorrance was an officer of Campbell Soup Company of Camden, New Jersey, and in 1915 he became its president. At the date of his death he owned all of the shares of capital stock of that company (R. 5).

In April, 1925, Dr. Dorrance purchased a residential property known as "Woodcrest", at Radnor, Delaware County, Pennsylvania. He took title in the name of himself and his wife as tenants by the entireties. The property

consisted of 119 acres and the purchase price was $350,000. It was located in the finest residential section of suburban Philadelphia. To prepare the property for occupancy Dr. Dorrance expended more than the purchase price of the land (R. 5).

At this time Dr. Dorrance's family consisted of his wife and five children who had been born respectively in 1907, 1909, 1911, 1915, and 1919 (R. 5).

On November 14, 1925, Dr. Dorrance removed his wearing apparel, his personal effects, his library, and the wearing apparel and other personal effects of his wife and children from Cinnaminson, New Jersey, to "Woodcrest", Radnor, Pennsylvania, and there established his dwelling place and family home without any present intention of changing it to any other place (R. 5, 18, 215, 218).

During the rest of his life Dr. Dorrance spent substantially all of his time at the Radnor homestead except when he was at business during the day and when he was in New England on summer vacations or in Europe. He lived there continuously with his family (R. 6, 18, 218, 219).

Notwithstanding the removal of his family to "Woodcrest" Dr. Dorrance retained the place at Cinnaminson (R. 6).

He was unwilling to pay the Pennsylvania four-mill tax on intangible property and for that reason wished to retain his "legal residence" in New Jersey (R. 6, 21, 215).

But between November 14, 1925, and February 12, 1926, Dr. Dorrance did not spend a night at Cinnaminson. During the entire year 1926 he spent only eleven nights there. In the summer of 1926, while his family was in New Eng-

land, he lived at "Woodcrest", not at Cinnaminson; and he did likewise in the summer of 1927 (R. 6).

Prior to January 1, 1926, Dr. Dorrance instructed his secretary, Miss Gertrude Britton, to begin on that date to keep a diary showing where he spent each night (R. 158). She did so, and in her reply affidavit (R. 157) sets forth the daily entries in the diary from January 1, 1926 to the date of Dr. Dorrance's death (R. 159-213).

Rather than relate in detail the contents of these diaries, we have summarized in the following tables, the record of the nights spent by Dr. Dorrance at various places:

THE YEAR 1926

	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
Radnor, Pa.	28	26	28	27	10	12	16	21	29	29	20	28	274
Europe					14	11							25
Cinnaminson, N. J.	1	1	1			1	*6		1	1			12
At Sea					6	6							12
Trains & Boats							3	4					7
Jamestown, R. I.							3	6					9
Philadelphia, Pa.	2			2								3	7
Havre de Grace, Md.										1	8		9
New York		1	1		1		1				1		5
Washington, D. C.				1									1
Camden, N. J.			1										1
No Record							2				1		3
TOTAL	31	28	31	30	31	30	31	31	30	31	30	31	365

*"Woodcrest" servants on vacation for 10 days. See Mrs. Dorrance's affidavit (R. 216).

THE YEAR 1927

	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
Radnor, Pa.	30	25	29	25		10	20	13	30	25	27	28	262
Europe					26			3					29
Cinnaminson, N. J.	1	1											2
At Sea				5	5	2		13					25
Boats & Trains							1	1		3			5
Canada						18	3						21
Jamestown, R. I.							7	1					
Philadelphia, Pa.			1									1	2
Havre de Grace, Md.											3		
New York		1								2			3
No Record		1	1							1		2	5
TOTAL	31	28	31	30	31	30	31	31	30	31	30	31	365

THE YEAR 1928

	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
Radnor, Pa.	14	8	30	27	11				11	30	29	29	189
Europe					11	29							40
Bar Harbor, Me.							14	21	4				39
Cinnaminson, N. J.							*9	*8	*14		1		32
At Sea					6		6						13
Boats & Trains	7	3	1	2	2		1	2	1				19
Florida	10	18											28
New York				1						1			2
Chicago, Ill.					1								1
No Record							1					2	3
TOTAL	31	29	31	30	31	30	31	31	30	31	30	31	366

*"Woodcrest" servants at Bar Harbor with family, or on vacation. See R. 216.

THE YEAR 1929

	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
Radnor, Pa.	31	28	27		1	22				7	28	28	172
Europe				27	24				14	18			83
Bar Harbor, Me.						2	26	13	3				44
Cinnaminson, N. J.			1			*5	*4	*16	*6		2		34
At Sea			3	3	6				5	6			23
Trains						1	1	2	2				6
Philadelphia, Pa.												3	3
TOTAL	31	28	31	30	31	30	31	31	30	31	30	31	365

*"Woodcrest" servants on way to Bar Harbor or at Bar Harbor with family. See R. 216.

THE YEAR 1930

	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
Radnor, Pa.	29	19	22	11		8							89
Europe				15	31	13							59
Bar Harbor, Me.							26	27	11				64
Cinnaminson, N. J.	1	1	1			2	*3	*3	†6				17
At Sea				4		7							11
Trains & Boats		3	2				2	1	1				9
Florida		4	6										10
Philadelphia, Pa.	1												1
Chicago, Ill.		1											1
Newport, R. I.									2				2
TOTAL	31	28	31	30	31	30	31	31	20				263

*"Woodcrest" servants at Bar Harbor with family. See R. 216.

†"Woodcrest" not ready for occupancy when Dr. Dorrance fatally stricken.

The following table summarizes the diary record for the entire period:

SUMMARY, 1926-1930

	1926	1927	1928	1929	1930	TOTAL
Radnor, Pa.	274	262	189	172	89	986
Europe	25	29	40	83	59	236
Bar Harbor, Me.	0	0	39	44	64	147
Cinnaminson, N. J.	12	2	32	34	17	*97
At Sea	12	25	13	23	11	84
Trains & Boats	7	5	19	6	9	46
Florida	0	0	28	0	10	38
Canada	0	21	0	0	0	21
Jamestown, R. I.	9	8	0	0	0	17
Philadelphia, Pa.	7	2	0	3	1	13
Havre de Grace, Md.	9	3	0	0	0	12
New York	5	3	2	0	0	10
Chicago, Ill.	0	0	1	0	1	2
Newport, R. I.	0	0	0	0	2	2
Washington, D. C.	1	0	0	0	0	1
Camden, N. J.	1	0	0	0	0	1
No Record	3	5	3	0	0	11
TOTAL	365	365	366	365	263	1724

*Of the 97 nights which Dr. Dorrance spent at Cinnaminson after November 14, 1925, less than 24 were spent there when it would have been possible for him to live at "Woodcrest", Radnor.

At no time between November 14, 1925, and the date of his fatal illness in September, 1930, did Dr. Dorrance and his family ever assemble at Cinnaminson, New Jersey, for any purpose nor did Dr. Dorrance at any time during that period reside with his family at Cinnaminson or any

other place in New Jersey or otherwise treat the Cinnaminson residence as his home and the home of his family (R. 7, 18, 214, 218).

During this period Dr. Dorrance's wife and children attended church at Radnor, his children attended school in Pennsylvania, his oldest daughter was married at Radnor, and all social functions given by any member of the Dorrance family were at "Woodcrest".

Dr. Dorrance customarily spent his week-ends at "Woodcrest" with his family. One of his greatest delights was to walk about the place and inspect the grounds. The family celebrated Thanksgiving Day, Christmas Day, and other holidays at "Woodcrest". Whenever Dr. Dorrance went to Europe he left from and returned to "Woodcrest", and when the family went to New England for vacation its luggage was shipped from and returned to "Woodcrest" (R. 7, 19, 219).

Mrs. Hill,—Dr. Dorrance's oldest daughter,—was married on October 1, 1927. Her husband never saw Cinnaminson, N. J., until the time of Dr. Dorrance's last illness in September 1930; but Mr. and Mrs. Hill visited her family at Radnor at least two week-ends per month throughout that period (R. 219).

In August, 1926, Dr. Dorrance's mother and sister, both of whom were ill, moved into the place at Cinnaminson and lived there until they died,—his sister in the summer of 1928, and his mother early in 1929 (R. 7).

On June 30, 1928, Dr. Dorrance purchased additional ground adjoining "Woodcrest" consisting of more than eight acres at a cost of $52,500, and on July 26, 1929, ten additional acres at a cost of $60,000 (R. 7).

Prior to 1925, the annual cost of operating "Pomona Farms" as the Dorrance home was between $20,000 and $30,000. After the family moved to "Woodcrest" the cost of maintaining "Pomona Farms" became less each year. Respectively, the expenditures for that purpose for 1927 were $10,344.29; for 1928, $8,373.89; for 1929, $6,459.90; and for the first nine months of 1930, $4,200.17 (R. 8, 158).

On the other hand, the cost of operating "Woodcrest" was more than $90,000 per annum for 1926 and 1927, and at the same rate thereafter except in the summer when the household servants were taken to Maine (R. 8, 158).

Before "Woodcrest' was acquired, there were 10 servants at "Pomona Farms", but after that never more than 4. At "Woodcrest" the number of house servants was from 13 to 16, plus outside employees numbering 10 to 12 (R. 8, 19).

In his effort to maintain a "legal residence" in New Jersey, Dr. Dorrance continued to vote in New Jersey, paid a small personal property tax at Cinnaminson, retained his membership in the vestry of a church in Riverton, New Jersey, and made many declarations including a statement in his will that he was a resident of New Jersey (R. 6).

Dr. Dorrance desired his children to go to Cinnaminson periodically and spend a night there, and Mrs. Dorrance explained to them that it was necessary for the children to do that because their father wished to retain his "legal residence" in New Jersey and would become involved in a serious tax question under the laws of Pennsylvania unless he did so. But when the children went to Cinnaminson, it was necessary for them to take their cloth-

ing and other effects in a bag because they had no wearing apparel there (R. 20).

The entire Dorrance family customarily referred to "Woodcrest" as "home". They spoke of the place at Cinnaminson as "the farm". (R. 20).

The family chauffeur was moved, with his family, from Cinnaminson, N. J., to Radnor, Pa., on November 14, 1925. He lived there continuously thereafter. When Dr. Dorrance wished to be driven to Radnor, he said "Home". Whenever he wished to be driven to Cinnaminson, he said "Farm". (R. 220).

Dr. Dorrance was at Cinnaminson at the time of his death because the family had been at Bar Harbor, Maine, for the summer, the servants had been with them, and "Woodcrest" had not been occupied for the summer. For that reason, Dr. Dorrance went to Cinnaminson when he left Bar Harbor, intending to stay there until the servants had arrived at "Woodcrest" and prepared it for occupancy. He suffered a stroke and died within five days (R. 8).

As already stated, Dr. Dorrance's final resting place is in West Laurel Hill Cemetery, in Philadelphia, Pennsylvania (R. 3).

In their answer, appellees do not state any countervailing facts. They make numerous categorical denials and content themselves with an effort to incorporate by reference in an "Answering Affidavit", as a rebutting document, the entire transcript of testimony in the Pennsylvania litigation (R. 111). In this effort, the affiant did not swear to the truthfulness of any fact contained in the

Pennsylvania record. We objected to the inclusion of this material in this record (R. 235) and did not order any part of it printed (R. 541); but counsel for the appellees insisted that a part of it be printed (R. 543). Believing that this Court will not on these appeals, decide the controveries on the merits, we shall not summarize or analyze the Pennsylvania testimony of certain of the executors, printed at R. 237-454.

The New Jersey Proceedings.

On October 17, 1931, the State Tax Commissioner of New Jersey made an assessment of transfer inheritance tax against Dr. Dorrance's estate in the sum of $12,247,333.52, with an additional assessment in the sum of $4,521,143.90 on account of certain contingent remainders. The assessment was made under the supposed authority of the New Jersey Transfer Inheritance Tax Act of April 20, 1909, ch. 228 (R. 10).

On December 12, 1931, the State Tax Commissioner opened the assessments he had made, pending the decision of the Pennsylvania courts on Pennsylvania's claim for inheritance tax. The purpose of opening the assessments was to permit additional information to be submitted regarding Dr. Dorrance's domicile (R. 10).

On October 10, 1932, the State Tax Commissioner again made an assessment of transfer inheritance tax against the estate in the amount of $12,247,333.52, with interest at the rate of 10 per cent. per annum from September 21, 1931 (R. 10).

The assessment included tax on certain tangible personal property of Dr. Dorrance and upon all of his intangi-

ble personal property. It included a specific assessment against appellant Hill's life interest in Dr. Dorrance's estate, in the sum of $1,566,925.01 (R. 11).

On December 9, 1932, Dr. Dorrance's executors challenged the assessment by appeal to the Ordinary of the State of New Jersey (R. 11).

On May 11, 1934, the Ordinary entered a decree in the Prerogative Court, ordering the State Tax Commissioner to modify the assessment, but sustaining it insofar as it included tax on decedent's intangible personal property (R. 98).

Thereupon the executors obtained a writ of certiorari from the Supreme Court of New Jersey. That court on February 11, 1935, sustained the decree of the Prerogative Court (R. 11).

The appellants take the position that both the proceedings before the Ordinary and the review by the Supreme Court of New Jersey, were administrative in character, and not judicial.

On February 15, 1935, the State Tax Commissioner addressed a letter to the executors through their counsel threatening that if any further litigation was pursued in the courts of New Jersey, he would decline to give to the estate the benefit of the New Jersey Act of July 11, 1934, ch. 249, which authorized him to accept the principal amount of the tax without interest (R. 25).

Dr. Dorrance's executors have placed in escrow personal property of the estate appraised at more than $12,000,000, as security for the payment of the tax which defendants threaten to collect, if the executors shall finally

be held liable to pay it. Additional personal property appraised at more than $67,000,000 was also tied up because the State Tax Commissioner and the State Supervisor of the Inheritance Tax Bureau refused to issue waivers permitting the property to be transferred (R. 12-13).

The bills of complaint aver that the tax demanded by appellees "cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or a statutory proceeding in the Prerogative Court of New Jersey." (Paragraph 43, R. 11.) This averment is expressly admitted in the Amendment to Answer (R. 107).

The Basis for Injunctive Relief.

The bills of complaint set forth the following facts to establish the inadequacy of any remedy at law, and to support the averment that appellants will sustain irreparable injury unless injunctive relief is granted:

1. Were the executors to pay the tax claimed by the appellees, it would be the State Tax Commissioner's duty immediately to pay the money into the State Treasury (R. 14).

2. Immediately upon receiving the tax it would be the duty of the State Treasurer under the New Jersey Act of September 19, 1934, ch. 255, to apply $10,000,000 of the tax to the redemption of New Jersey State Bonds issued under that Act after a vote of the people (R. 14).

3. New Jersey has not consented to be sued in the United States courts for the recovery of inheritance tax erroneously paid or unlawfully collected (R. 14).

4. If the executors were to pay the tax which the appellees demand, even if the executors could thereafter

obtain a judgment against the appellees individually for collecting and receiving the tax illegally, the appellees would be financially unable to respond to such judgment and their official bonds would not be available to the executors as a source of recovery (R. 14).

5. Were the executors to pay under protest the tax claimed by the appellees, their only recourse thereafter would be an application for a refund under Section 15 of the New Jersey Inheritance Tax Act which permits but does not require the Comptroller to draw his warrant on the State Treasury in favor of persons who have "erroneously" paid inheritance tax to the State Tax Commissioner. But under this Act there is no appeal from the refusal of the Comptroller to grant a refund and a warrant would not result in the immediate payment of the refund for the reason that the available balances in the State Treasury would not enable so large a refund to be made until after the lapse of a substantial period of time, if at all (R. 15, 217).

6. Proper administration and distribution of the decedent's estate is impossible because of the pendency of this tax claim (R. 13).

7. The executors are compelled to maintain large cash reserves at a low rate of interest because of the threatened tax collection by the appellees (R. 12).

8. Further litigation in New Jersey will involve payment of expenses which cannot be recovered either from the appellees or from the State of New Jersey (R. 14).

9. The appellees' claim is alleged to constitute a lien on all of the property of decedent's estate, and constitutes a cloud upon the title thereto (R. 14).

10. Although the executors of the decedent's estate have placed in escrow property valued at more than $12,000,000, as security for the payment of the claimed tax, the appellees have a technical right to insist upon the filing of a bond in an amount exceeding $24,000,000. The premium on such a bond would be substantial and would be a non-recoverable item of expense (R. 13).

In support of our contention that these averments amply warrant equitable relief we cited to the court below **Fox v. Standard Oil Co.**, 294 U. S. 87 (1935); **City Bank Farmers Trust Co. v. Schnader**, 291 U. S. 24 (1934); **Stewart Dry Goods Co. v. Lewis**, 287 U. S. 9 (1932); **Atlantic Coast Line v. Daughton**, 262 U. S. 413 (1923).

SPECIFICATION OF ERRORS.

1. The United States District Court for the District of New Jersey erred in denying the interlocutory injunctions prayed for by the plaintiffs.

2. The United States District Court for the District of New Jersey erred in holding that it was without jurisdiction to grant the prayers of the Bills of Complaint for interlocutory injunctions.

3. The United States District Court for the District of New Jersey erred in entering, in each case, the following decree:

> "And now, to wit, June 4, 1935, this cause came on to be heard at this term, and was argued by counsel, and upon consideration thereof, it is ordered, adjudged and decreed as follows:
>
> "I. The prayer of the Bill of Complaint for interlocutory injunction be, and is hereby denied for want of jurisdiction, to grant such interlocutory injunction."

ARGUMENT.

SUMMARY.

The bills of complaint present a Federal question of great importance. It is, in effect:

May the Federal courts restrain State officers from collecting inheritance taxes on the intangible personal property of a person who at the time of his death was domiciled in another State?

We submit that they may grant an injunction in such case: If the State officers are properly construing their inheritance tax statute, it is unconstitutional under the Fourteenth Amendment. If they are not properly construing the statute, they are seeking to take property of the estate without warrant of law.

Between **City Bank Farmers Trust Company v. Schnader, et al.**, 291 U. S. 24 (1934), and the present cases there is but one important difference:

That case involved the interpretation by State taxing officers of an inheritance tax act in relation to the situs of **tangible** personal property.

These cases involve the interpretation by State taxing officers of an inheritance act in relation to the situs of **intangible** personal property.

These cases come within Section 266 of the Judicial Code because the appellants are seeking to prevent the enforcement of a State statute on the ground of its unconstitutionality under the Constitution of the United States.

The facts pleaded in the bills of complaint and contained in the injunction affidavits and the reply affidavits in the court below, clearly establish the fact that, prior to

his death, Dr. Dorrance had removed his family home to Pennsylvania without any present intention of not residing in that State indefinitely.

Under the law of domicile as established by this Court and as stated by the American Law Institute in its **Restatement of the Law of Conflict of Laws**, Dr. Dorrance was domiciled in Pennsylvania at the time of his death.

The technical objections advanced by appellees against appellants' right to relief, are without merit:

(a) An injunction may be granted without violating Section 265 of the Judicial Code:

No action is now pending in New Jersey which an injunction would stay.

No judgment for inheritance tax has been rendered.

The only action thus far has been an assessment, made by an administrative officer. Challenged on appeal by the executors, that assessment was modified by direction of a court, but otherwise affirmed. A second court has sustained the action of the first court.

To collect the tax, the appellees must institute a new and independent action. The action would be either an action of debt in the name of the State of New Jersey, or a statutory proceeding against the persons interested in the property of the estate.

To date, the New Jersey authorities have an assessment against the property of the Dorrance Estate, and nothing more.

And whether the action of the courts in passing upon the assessment was administrative or judicial, the assessment is merely an administrative act.

(b) As there has never been a judgment in a judicial proceeding in New Jersey, res judicata cannot be pleaded successfully:

The New Jersey court of last resort has held that in reviewing tax assessments, the Ordinary is merely a "legislative agent". Until now, the Attorney General of New Jersey has taken the position that the function of the Ordinary in these cases is "purely administrative".

The Supreme Court of New Jersey, on certiorari to the Ordinary, also makes an administrative review of the State Tax Commissioner's action. Upon no theory could the Court's action be regarded as an ordinary appeal.

The Court takes the record as made by the Tax Commissioner, may order additional evidence taken on deposition or otherwise, may permit the parties to take additional evidence, and upon consideration of the facts and the law, may affirm, set aside or modify the assessment.

This procedure parallels that which this Court considered in **Radio Commission v. General Electric Co.**, 281 U. S. 464 (1930).

(c) Even if the action of the Supreme Court of New Jersey was judicial, it is not res judicata in the Federal courts because it is not the judgment of a State court of last resort, and it has not been acquiesced in by the executors. They will take a further appeal unless these proceedings render it unnecessary.

(d) None of the appellants is estopped to take action against the appellees. Jurisdiction of New Jersey au-

thorities to collect the tax in question must arise by law; it cannot be acquired by consent or by conduct.

(e) There was no undue delay in instituting these proceedings. They were brought (as appellants conceive the law) almost immediately at the conclusion of the administrative procedure for the correction of the New Jersey tax assessment. In any event, the appellees have not been prejudiced if there was delay.

Appellant, Mrs. Hill, has a right to maintain an action in her own name.

The authority of the executors is under fire, both on their own petition for revocation of probate, and on the petition of the State Tax Commissioner for their removal and the substitution in their stead, of the New Jersey State Treasurer.

Both of these petitions have been pending for a long time. Should either of them be granted, Mrs. Hill's interests, as affected by the appellees' threat to collect inheritance tax, would be gravely prejudiced in the absence of independent proceedings in her own name.

The circumstances of these cases are such that the Federal courts should not be astute to find reasons for declining to take jurisdiction or grant relief.

Already the executors have been obliged to pay to the Commonwealth of Pennsylvania, transfer inheritance tax on the intangible personal property of this estate in the amount of more than $14,000,000. That payment was made only after a bitter contest which was carried to the highest court of the State. Two petitions for certiorari were denied by this Court. 287 U. S. 660 (1932); 288 U. S. 617 (1933).

The final Pennsylvania judgment was offered in evidence before the New Jersey State Tax Commissioner, without objection on the part of the New Jersey authorities.

But the courts of New Jersey (we contend, acting in an administrative rather than a judicial capacity), reviewing the action of the State Tax Commissioner in assessing the intangible personal property of the estate for taxation, held that, although the Pennsylvania action was *in rem*, they were not obliged to recognize the Pennsylvania judgment unless they found that Dr. Dorrance was domiciled in Pennsylvania at the time of his death, and that, therefore, the Pennsylvania courts had jurisdiction over the subject matter of the action. And they found to the contrary.

Nevertheless, in these actions, the Federal courts are asked by the New Jersey authorities to recognize as res judicata the judgment (if it is a judgment, which we deny), of an intermediate court of appeal, without any inquiry into the question whether decedent, at the date of his death was domiciled in New Jersey, and thus whether the New Jersey courts had jurisdiction over the subject matter of the action.

Neither comity nor public policy require the Federal courts to recognize the judgment of an inferior State court of one jurisdiction, and to refuse to recognize the judgment of the highest court of another State on the identical question, even though the parties to the litigation were not the same.

I.

SECTION 265 OF THE JUDICIAL CODE DOES NOT PROHIBIT THE GRANTING OF INJUNCTIONS IN THESE CASES.

The court below (R. 228) refused to grant the injunction sought by the appellants, because in its opinion, it was prevented from doing so by Section 265 of the Judicial Code (U. S. C. A. Section 379).

That section provides that:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Neither the State of New Jersey nor any officer of the State has ever instituted any action in any court to collect inheritance tax from the executors of the will of Dr. Dorrance or from any beneficiary under the will.

Neither the State nor any of its officers has ever been plaintiff in any action against the executors which resulted in a judgment against the executors.

At the present time, no litigation between the executors of the estate and any of the appellees is pending in the courts of New Jersey.

An assessment has been made by an executive officer, and on appeal by the executors it has been modified and otherwise affirmed by the Prerogative Court and by the Supreme Court of New Jersey.

The assessment has not changed in character or effect because it has been affirmed as corrected.

It is still an assessment and nothing more.

To collect inheritance tax by adverse proceedings two methods are available to the officers of the State of New Jersey, as follows:

1. If they desire to proceed against "administrators, executors, trustees, grantees, donees or vendees", they may bring an action of debt "in the name of the State of New Jersey." Transfer Inheritance Tax Act, Section 1, Appendix, p. 111.

2. If they desire to proceed against property they may cause the register of the Prerogative Court to issue a citation against "the persons or corporations interested in the property liable to said tax," as provided in Section 21 of the Transfer Inheritance Tax Act. Appendix, p. 124.

This procedure was undoubtedly intended to apply to the situation covered by Section 10 of the Transfer Inheritance Tax Act (Appendix, p. 117), namely, "Whenever any of the **real estate** of which any decedent may die seized shall pass to any body politic or corporate, or to any devisee or beneficiary . . ."

That one of these actions must be instituted to collect the tax, is admitted by the pleadings.

Paragraph 43 of the Bill of Complaint in the Hill Case (R. 11) and Paragraph 36 of the bill in the Executors' Case (R. 500), aver:

> "And the tax which defendants demand cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or a statutory proceeding in the Prerogative Court of New Jersey."

The answers to these averments appear at R. 107 and R. 538, as follows:

"They [defendants] admit that said tax cannot be collected until after the institution of an action of debt in the name of the State of New Jersey, or by a statutory proceeding in the Prerogative Court of New Jersey; . . ."

The statutory proceeding was described by the Attorney General in his brief in the court below (page 33) as follows:

"The quoted provision of the statute (sec. 21) authorizes the Tax Commissioner to report to the register of the Prerogative Court the facts as to unpaid taxes, and **after a hearing in that court**, the register, upon the making of a decree therein, is authorized to furnish copies of said decree to the Commissioner and the same are **then** docketed and filed by the Clerk of the Supreme Court or by the County Clerk of any county upon the request of the Tax Commissioner, 'and the same shall have the same effect as a lien by judgment, and execution shall issue thereon according to the rule and practice appertaining to other judgments docketed and filed with said respective clerks.'"

That there has been no judgment of a court in this case, to which either an action of debt or a proceeding under Section 21 of the Transfer Inheritance Tax Act, could be supplemental, appears from the decrees of the Prerogative Court and of the Supreme Court.

The Prerogative Court decreed (R. 100):

". . . that **respondent** [the State Tax Commissioner] **in determining the clear market value of the property of the estate of John T. Dorrance**, deceased, **allow further deductions** (including additional counsel fees and executors' commissions), **in the amount of $533,784.81**, as allowed by the Orphans' Court of Burlington County, New Jersey, and

"It is further Ordered, Adjudged and Decreed that **the assessment of transfer inheritance taxes as made by respondent** on October 10, 1932, amounting to $12,247,333.52 upon the transfer of the property of said John T. Dorrance, deceased, as that of a resident decedent, **subject to the above modifications,** be and the same in all other respects **is hereby affirmed.**"

Thus the assessment was ordered to be corrected by the State Tax Commissioner.

The Prerogative Court did not enter a judgment or decree against the executors. It merely affirmed, after future correction by the State Tax Commissioner, that officer's administrative act.

And the action of the Supreme Court of New Jersey (R. 157) was:

"It is . . . Ordered that the **assessment** of transfer inheritance taxes in the matter of the estate of John T. Dorrance, deceased, **as corrected** by the final decree of the Prerogative Court . . . be and the same **is hereby affirmed** and that the writ of certiorari allowed herein be dismissed, with costs."

After correcting the assessment, assuming no further appeal by the executors challenging the validity of the assessment, the State Tax Commissioner would be in a position to call upon the Attorney General to bring against the executors an action of debt in the name of the State of New Jersey, for the collection of the tax.

Appellees' effort, notwithstanding the admissions in the Answers, now to say that collection proceedings are supplementary to the proceedings heretofore had in the courts of New Jersey, becomes absurd, when the actual

decrees of those courts are examined. (See Appellees' Brief on the Question of Jurisdiction, p. 2.)

It is evident that any action to collect the tax is a new and independent action.

There is a well recognized distinction between assessment proceedings and collection proceedings. **Gully v. Interstate Natural Gas Co.**, 292 U. S. 16 (1934), 18; **Ex Parte Williams**, 277 U. S. 267 (1928), 271.

Exhaustive research has disclosed only one case in which a contention in any way resembling that now made by appellees, came before this Court.

In **Mississippi R. R. Com. v. Illinois Central R. R. Co.**, 203 U. S. 335 (1906) the railroad had obtained below an injunction against the Commission to restrain enforcement (by collection of a penalty in a state court) of an order of the Commission that the railroad stop certain trains at a certain town, on the ground that the order violated the commerce clause of the Federal Constitution. It was argued for the Commission that the injunction violated Section 265 of the Judicial Code. The Supreme Court flatly sustained the propriety of the injunction, saying, at page 341:

> "It is urged, however, that proceedings in a state court were commenced by the presentation of the petition of the citizens of Magnolia to the railroad commission, and because the commission having made an order to stop the trains, would have to resort to the proper state court to aid it in the enforcement of its order, therefore the whole proceeding must be regarded as in a state court from the commencement. Whatever may be the provision of the state statute in regard to the enforcement solely by the state court of the order

of the railroad commission, the proceeding while before the commission never thereby became a proceeding in a state court, and the jurisdiction of the Federal court to enjoin the commission from the enforcement of its order, because such order was a violation of the Federal Constitution, was not in the least affected."

The relief plaintiff seeks is exactly the same as the relief sought by the plaintiff in **City Bank Farmers Trust Company v. Schnader et al.**, 293 U. S. 112 (1934), except that the plaintiff here adds one item, namely, that the defendants be enjoined from refusing to release the securities of the Dorrance Estate now held in escrow.

Obviously, if relief had been granted after hearing on the merits in the **City Bank Farmers Trust Company Case** it would have been impossible for the defendants,—the Attorney General and the Secretary of Revenue of Pennsylvania,—to institute any action at law or in equity in the State courts, to collect the tax.

The court below apparently confused the provision of Section 265 of the Judicial Code, with the doctrine of election of remedies, as it sometimes applies as between courts of the same jurisdiction.

At R. 228, Judge Woolley said:

". . . But we are constrained to hold that, having passed by the ending of the administrative proceedings in respect to the tax and having thereafter entered a state judicial tribunal, the executors must abide the consequences, one of which is that proceedings in the state courts were not ended by the judgment of the Supreme Court . . . ."

It is well settled that the mere existence of pending litigation between the same parties in the State courts does

not defeat the jurisdiction of the Federal Courts: **Grubb v. Public Utilities Commission,** 281 U. S. 470 (1930) 476; **Hunt v. New York Cotton Exchange,** 205 U. S. 322 (1907), 339; **Stanton v. Embrey,** 93 U. S. 548 (1876), 554; **Central Iron & Coal Co. v. Massey,** 268 Fed. 300 (C. C. A. 5th, 1920); **Borden's Condensed Milk Co. v. Baker, et al.,** 177 Fed. 906 (C. C. A. 3d, 1910).

And this is equally true whether the proceeding in the Federal court is at law or in equity. **Insurance Company v. Brune's Assignee,** 96 U. S. 588 (1877); **Krauss Bros. Lumber Co. v. Louis Bossert & Sons, Inc.,** 62 F. (2d) 1004 (C. C. A. 2d, 1933); **Borden's Condensed Milk Co. v. Baker et al.,** *supra;* **Bank of Kentucky v. Stone,** (Taft J.) 88 Fed. 383 (C. C. Ky., 1898).

In **Krauss Lumber Co. v. Bossert & Sons,** Judge Learned Hand said, at p. 1006:

> "Coming to the merits, the first question is whether the pendency of the action upon the contract in the State court was a bar. That action was at law, ignoring the arbitration clause; this suit is in equity upon that clause. The causes of action are no doubt the same; but it is well settled that the plea of lis alio pendens is bad when the other suit is in a State court. . . ."

Thus it is clear that Section 265 of the Judicial Code does not apply when the only reason for applying it would be that there has been in the State courts litigation between the same parties relating to the same subject-matter.

Necessarily it prevents a Federal injunction restraining a plaintiff in a State court from proceeding with his suit. **Monamotor Oil Co. v. Johnson,** 292 U. S. 86 (1934); **Dial v. Reynolds,** 96 U. S. 340 (1877).

And it is true that when a party has sued for and obtained a judgment in the State courts, the Federal courts cannot enjoin proceedings to enable the plaintiff to obtain satisfaction of his judgment, whether such proceedings be an ordinary execution: **Leathe v. Thomas**, 97 Fed. 136 (C. C. A. 7th, 1899), or receivership proceedings supplemental to judgment: **Mutual Reserve Fund Life Association v. Phelps**, 190 U. S. 147 (1903).

In the case last cited, Mr. Justice Brewer said, at page 159:

> "Again, the proceeding for the appointment of a receiver was not a new and independent suit . . ."

and he described the procedure as "a mere continuation of the action at law."

As we have shown, there were no proceedings pending in any court of New Jersey when the present bills were filed, no officer of New Jersey had ever brought suit in any court to collect the tax, and the only proceedings ever carried to a New Jersey court were the executors' attacks upon the administrative act of the State Tax Commissioner in making a tax assessment.

At the conclusion of the court proceedings, it was the duty of the administrative officer to revise his administrative act. That having been done, the court said in effect, the administrative act,—the assessment,—will be valid.

Assessment must always precede collection, just as a valid contract must always precede a suit for breach of contract.

Suppose the parties to a contract became involved in a dispute over its validity, and one of them sued for a declaratory judgment. Suppose that the court entered its judgment sustaining the contract as valid.

Would a suit subsequently brought by the respondent in the declaratory judgment proceedings, to recover money due under the contract, be a mere continuation of the declaratory judgment proceedings?

To ask the question is to answer it.

We respectfully submit that there is no foundation for the belief of the court below, that Section 265 of the Judicial Code applies to this case.

II.

THIS CASE COMES WITHIN SECTION 266 OF THE JUDICIAL CODE.

It has repeatedly been held that a substantial Federal question is involved when the plaintiff contends that the construction of a State statute by an administrative officer of the State violates the Constitution of the United States. **Sterling v. Constantin**, 287 U. S. 378 (1932). **Chicago, Rock Island, Pacific Railroad Company v. Kendall**, 266 U. S. 94 (1924), **Greene v. Louisville and Interurban Railroad Company**, 244 U. S. 499 (1917); **Home Tel. & Tel. Co. v. City of Los Angeles**, 227 U. S. 278 (1913).

It is immaterial that the statute as enacted is valid on its face, if the interpretation placed upon it by administrative officers would render it unconstitutional; and as Mr. Justice Brandeis said in **Nashville C. & St. L. Ry. v. Walters**, 294 U. S. 405 (1935), at p. 415:

> ". . . A statute valid as to one set of facts may be invalid as to another . . ."

We contend that in all material respects this case parallels **City Bank Farmers Trust Company v. Schnader, et al.**, 291 U. S. 24 (1934).

In that case the plaintiff brought a bill in equity to enjoin the Secretary of Revenue and the Attorney General of Pennsylvania from collecting a transfer inheritance tax on tangible personal property owned by a non-resident but located in Pennsylvania at the date of death.

The plaintiff contended that the property did not have a situs in Pennsylvania for tax purposes because it had been loaned for an uncertain period to an art museum, with the understanding that it should be returned to the owner at his request.

The Pennsylvania officers answered that the property had been located in Pennsylvania for such a length of time that it had acquired a situs for tax purposes to the exclusion of the former situs of the property.

A three-judge court dismissed the bill for want of jurisdiction.

This Court reversed the three-judge court, required it to take jurisdiction, and later decided on the merits that the property had a situs for tax purposes in Pennsylvania. **City Bank Farmers Trust Company v. Schnader, et al.**, 293 U. S. 112 (1934).

We respectfully invite a comparison between the bills of complaint in the **City Bank Farmers Trust Company Case** and in this case.

The jurisdictional averments are as follows:

City Bank Case.	This Case.
23. "The plaintiff is advised by its counsel, believes and therefore avers, that if the said section 1 of the Act of June 20, 1919, P. L. 521, as amended (paragraph 12,	58. "If the New Jersey Act of April 20, 1909, ch. 228, authorizes defendants to collect transfer inheritance tax upon the transfer of intangible personal property

supra) be construed to impose an inheritance tax upon the transfer by death of the non-resident owner thereof, of the said 79 paintings, merely because they were temporarily 'within this Commonwealth' at the time of decedent's death, it is unconstitutional in that it deprives the plaintiff of its property without due process of law and denies to the plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States."

of a decedent, who prior to his death had established his dwelling place and family home in another state, without any present intention of not residing there indefinitely, it is unconstitutional in that it deprives the plaintiff as a legatee under decedent's will of her property without due process of law and denies to her the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States."

59. "If said statute authorizes defendants to collect transfer inheritance tax upon the transfer of intangible personal property of the estate of John T. Dorrance, deceased, under the circumstances heretofore in this Bill of Complaint set forth, it is unconstitutional in that it deprives the plaintiff as a legatee under decedent's will of her property without due process of law, and denies to her the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States."

24. "The plaintiff is advised by its counsel, believes and therefore avers, that if said statute be construed as not applying to property temporarily within the Commonwealth at death, then the threatened appraisal, assessment and collection by the defendants of said inheritance tax unconstitutionally deprives the plaintiff of its property without due process of law and denies to the plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States."

60. "If said statute be construed as not applying to property of a decedent, who prior to his death had established his dwelling place and family home in another State, without any present intention of not residing there indefinitely, then the threatened collection by the defendants of said inheritance tax unconstitutionally deprives the plaintiff as a legatee under decedent's will, of her property without due process of law and denies to her the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States."

The only differences between the cases are as follows:

1. **City Bank Farmers Trust Company v. Schnader** involved the situs of tangible personal property as determined by the location thereof, for purposes of transfer inheritance tax; this case involves situs of intangible personal property as determined by the domicile of the owner thereof, for purposes of transfer inheritance tax;

2. In the former case, the federal litigation was instituted before the state administrative procedure had been completed; here the administrative procedure has been completed; and

3. In this case, there is, in addition to a constitutional question under the Fourteenth Amendment, a question under the "Full Faith and Credit Clause".

We shall deal separately with these differences.

Situs and Domicile.

In **City Bank Farmers Trust Company v. Schnader**, 291 U. S. 24 (1934), at page 27, Mr. Justice Roberts paraphrased the constitutional questions raised by the bill of complaint, as follows:

> ". . . The bill charges that if the statute be construed to impose an inheritance tax upon the paintings merely because they were temporarily within the Commonwealth at the time of the decedent's death, it is unconstitutional as depriving the appellant of property without due process and denying equal protection of the laws, in contravention of the Fourteenth Amendment; and if the statute be construed as not applying to the property, the threatened appraisal, assessment and collection by the defendants will unconstitutionally deprive the appellant of property without due process and deny it equal protection."

And when the case came before this Court on the merits, 293 U. S. 112 (1934), Mr. Justice Butler said, at page 116:

> "Appellant, maintaining that when the owner died the paintings had no actual situs within Pennsylvania because only temporarily there, brought this suit to enjoin enforcement on the ground that, if the statute be construed to tax the transfer by the death of the nonresident owner, it is repugnant to the due process clause of the Fourteenth Amendment. As the transfer cannot be subjected to taxes imposed by more than one

> State . . . appellant framed its complaint to call for a decision whether Pennsylvania or New York is entitled to the tax. . . ."

The Court then considered fully the facts of the case, which, as indicated in the last quotation, involved the situs for transfer inheritance tax, of tangible personal property.

Mr. Justice Butler, at the end of his opinion,—page 120,—said:

> ". . . By sending them [the paintings] into Pennsylvania and by his omission to have them returned to New York, and his lack of definite intention ever so to do, Clarke failed to maintain an actual situs in New York and created one for them in Pennsylvania. . . ."

Now, let us turn to the cases which deal with the imposition of transfer inheritance tax on intangible personal property.

In **Farmers Loan and Trust Company v. Minnesota,** 280 U. S. 204 (1930), Mr. Justice McReynolds delivered the majority opinion of the court. The case involved the question whether Minnesota could impose a transfer inheritance tax upon the transfer of state and municipal bonds issued respectively by Minnesota, and by certain cities of that state, and owned at the time of his death by a person domiciled in New York.

The Court held that Minnesota could not tax the bonds. At page 212, Mr. Justice McReynolds said:

> "Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that in general intangibles may be properly taxed at the domi-

cile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles. The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota."

And in concluding his opinion he said:

"The bonds and certificates of the decedent **had acquired permanent situs** for taxation in New York; their testamentary transfer was properly taxable there but not in Minnesota."

In **Baldwin v. Missouri**, 281 U. S. 586 (1930), Missouri attempted to impose a transfer inheritance tax upon bank deposits within Missouri, United States bonds located within the State and promissory notes physically within the State which belonged at the time of her death to a person domiciled in Illinois.

Mr. Justice McReynolds again delivered the opinion of the Court. He said, at page 593:

"We find nothing to exempt the effort to tax the transfer of the deposits in Missouri banks from the principle applied in Farmers Loan & Trust Co. v. Minnesota, supra. So far as disclosed by the record, the **situs** of the credit was in Illinois, where the depositor had her domicile. There the property interest in the credit passed under her will; and there the transfer was actually taxed. This passing was properly taxable at that place and not otherwhere.

"The bonds and notes, although physically within Missouri, under our former opinions were choses in action with **situs** at the domicile of the creditor. At that point they too passed from the dead to the living,

and there this transfer was actually taxed. As they were not within Missouri for taxation purposes the transfer was not subject to her power. Rhode Island Trust Co. v. Doughton, 270 U. S. 69."

In **Beidler v. South Carolina Tax Commission**, 281 U. S. 1 (1930), South Carolina imposed a transfer inheritance tax upon the stock of a South Carolina corporation owned at the time of his death by a person domiciled in Illinois, and also upon an indebtedness owing to the decedent by a corporation of South Carolina.

The decedent's executors did not challenge the imposition of tax on the stock of the corporation, but resisted the payment of the tax on the indebtedness.

In an opinion by Mr. Chief Justice Hughes, this Court held that the indebtedness could be taxed only by Illinois, —the state of the creditor's domicile.

And in **First National Bank of Boston v. Maine**, 284 U. S. 312 (1932), the question was presented whether Maine could impose a transfer inheritance tax upon stock of a Maine corporation owned at the time of his death by a person domiciled in Massachusetts. This Court held that Maine could not impose the tax. In delivering the opinion of the Court, Mr. Justice Sutherland said, at page 326:

". . . Due regard for the processes of correct thinking compels the conclusion that a determination fixing the local **situs** of a thing for the purpose of transferring it in one state, carries with it an implicit denial that there is a local **situs** in another state for the purpose of transferring the same thing there . . ."

And at page 328:

"We conclude that shares of stock, like the other intangibles, constitutionally can be subjected to a death transfer tax by one state only."

It was held that only the state of domicile could impose the tax.

These cases make it clear that the question which arises when two states attempt to impose transfer inheritance taxes upon the same intangible property of a decedent is a question of **situs. Situs** for the purpose of taxation **depends upon the domicile of the owner** at the time of his death.

Thus the parallel between **City Bank Farmers Trust Co. v. Schnader,** and the present case is complete.

In both cases the question at issue is the **situs** of property for inheritance taxation. In the former case the question depended upon the location of tangible property as determined by the duration and circumstances of its physical presence; in the present case the question depends upon the location of intangible property as determined by the domicile of the owner at the time of his death.

In both cases, whether the act violates the due process clause of the Fourteenth Amendment depends upon the construction given to it by State administrative officers in applying the law to the facts.

The Constitutional Questions in This Case.

The appellants contend that the New Jersey assessment, as far as it includes transfer inheritance tax on Dr. Dorrance's intangible personal property, violates the Fourteenth Amendment of the Constitution of the United States.

If the New Jersey Inheritance Tax Act of April 20, 1909, ch. 228, its amendments and supplements, has been properly construed by the appellees (and by the other

administrative agencies of New Jersey), as applying to property the situs of which was outside of the State because the owner was not domiciled in New Jersey at the time of his death, it is unconstitutional under the Fourteenth Amendment.

If the Act has not been properly construed by the appellees, the assessment violates the due process and equal protection clauses of the Fourteenth Amendment.

And the refusal of the appellees to give full faith and credit to the judgment of the Supreme Court of Pennsylvania, received in evidence by the State Tax Commissioner without objection, is repugnant to Article IV, Section 1 of the Constitution of the United States.

The Time of Instituting Proceedings.

The basic rule which governs the time when proceedings may be brought in a Federal court to enjoin State officers from committing unconstitutional acts under State statutes, is:

Suit must not be brought until the legislative or administrative procedure of the State has been completed.

To this general rule exceptions have been made in only a very few cases, and only under unusual circumstances.

After the State proceedings have reached the judicial stage, suit may always be brought in the Federal court; and as we have shown (ante, p. 32) the pendency in the State courts of another suit between the same parties, involving the same subject matter, does not bar a suit in the Federal courts.

In **Prentis v. Atlantic Coast Line Company**, 211 U. S. 210 (1908), this Court held that the review by the Supreme Court of Virginia of the action of the State Corporation

Commission in a rate case was administrative; and that pending that review, a bill in equity filed in the United States District Court under Section 266 of the Judicial Code should be held in abeyance.

In sharp contrast, is the decision in **Bacon et al. v. Rutland R. R. Co.**, 232 U. S. 134 (1914). There the Vermont Public Service Commission had made an order requiring the plaintiff to build a certain passenger railway station.

Without appealing to the Supreme Court of the State, the railroad company applied to a three judge court for an injunction to stay enforcement of the Commission's order.

In an opinion by Mr. Justice Holmes, the Court affirmed the action of the District Court in granting an injunction.

The basis of the decision was that the review by the Supreme Court of the State was wholly judicial and that therefore the railroad company was free to assert its rights in the District Court without first taking an appeal to the Supreme Court of the State.

In **Pacific Telephone & Telegraph Company v. Kuykendall**, 265 U. S. 196 (1924) the Department of Public Works of the State of Washington refused to permit the telephone company to increase its rates. Without taking an appeal to the Superior Court of Washington the plaintiff applied to a three judge court for an injunction. The injunction was denied. Thereupon the company appealed to this Court but before that appeal was argued the District Judge heard the case on a motion to dismiss the bill and granted the motion. From this action a second appeal was taken.

Mr. Chief Justice Taft speaking for the Court, held that the review by the Superior Court of Washington was

a judicial review, and accordingly that the District Court had erred in refusing the injunction.

In **Oklahoma Natural Gas Company v. Russell et al.**, 261 U. S. 290 (1923) the gas company had applied to the Oklahoma Corporation Commission for higher rates which were denied. The Constitution of Oklahoma permitted an appeal to the Supreme Court of the State acting in a legislative capacity with power to substitute a different order, and to grant a supersedeas in the meantime. An appeal was taken to the State Supreme Court and a supersedeas was applied for; but it was refused. Thereupon, pending the decision of the appeal by the State Supreme Court, the plaintiff filed a bill asking for injunctive relief upon constitutional grounds.

A three judge court refused a preliminary injunction, believing that it was required to do so by the decision in the **Prentis Case.**

This Court in an opinion by Mr. Justice Holmes reversed the court below. It held that the three-judge court had jurisdiction and that relief ought to have been given to the plaintiff.

This is one of the exceptional cases in which an injunction was held proper, even though the State administrative procedure had not been completed. The refusal of the State Supreme Court to grant a supersedeas was held to justify this course, because of the injury which the plaintiff would sustain if the injunction were not granted.

In **Porter v. Investors Syndicate**, 286 U. S. 461 (1932) a Minnesota corporation was granted a license under the Montana "Blue Sky Law". Subsequently the state officer charged with the enforcement of the law made an order for-

bidding the appellee to do a certain type of business and threatening to revoke his license unless he obeyed the order.

The licensee brought a bill before a three-judge court to restrain the state officer from revoking its license alleging that the state officer's action would deprive him of property without due process of law.

From decisions of the state officer the state law permitted a review by the State district court, which was given authority to "set aside, modify or confirm said . . . decision as the evidence and the rules of equity may require." The case was taken to the district court by bill in equity. From the district court an appeal was allowed to the Supreme Court of the State.

This Court in an opinion by Mr. Justice Roberts held that the application for injunction to the United States District Court was premature.

At page 471, Mr. Justice Roberts said:

> "The present case is not one in which the review of the commissioner's action is judicial in character. If it were, the authorities cited by appellee which hold that one competent to invoke the jurisdiction of the federal courts is not bound to pursue a judicial review in the state courts would apply. See Bacon v. Rutland R. Co., 232 U. S. 134; Prendergast v. New York Tel. Co., 262 U. S. 43; Railroad Commission v. Duluth St. Ry. Co., 273 U. S. 625. As we have seen, under the Montana statute the administrative proceeding is not complete until the court shall have acted in revision and correction of the commissioner's decision. . . ."

As we have already pointed out, another exception to this rule was made in **City Bank Farmers Trust Co. v. Schnader.** But that was because this Court held that the Pennsylvania inheritance tax procedure ceased to be admin-

istrative as soon as the appraisement was made by the taxing officer; the officer had unequivocally declared his intention of making the appraisement; and the valuation was admittedly correct.

See also **Central Kentucky Natural Gas Co. v. Railroad Commission**, 37 F. (2d) 938 (D. C. Ky., three-judge court, 1930); **Schlosser et al. v. Welsh**, 5 F. Supp. 993 (D. C., So. Dak., three-judge court, 1934); **Grandin Farmers' Co-Op. Elevator Co. v. Langer**, 5 F. Supp. 425 (D. C., No. Dak., three-judge court, 1934); and **Hegeman Farms Corporation v. Baldwin**, 6 F. Supp. 297 (D. C., S. D. N. Y., three-judge court, 1934).

These cases involved, respectively, gas rates, an income tax law, an executive proclamation regulating grain elevators, and a milk regulation.

In the **Schlosser Case**, the Court said, at p. 997:

> "Where a state board or tribunal, or successive boards or tribunals, are vested with legislative or administrative powers with reference to taxation or rate fixing, it is settled by the decisions that, before resort may be had to a federal court to enjoin the tax or rate being carried into effect, the legislative or administrative remedies must be first exhausted. Prentis v. Atlantic Coast Line Co., 211 U. S. 210, 29 S. Ct. 67, 53 L. Ed. 150; Porter v. Investors' Syndicate, 286 U. S. 461, 52 S. Ct. 617, 76 L. Ed. 1226; Air-Way Electric Appliance Corp. v. Archer (D. C.) 279 F. 878."

III.

DISTINCTION BETWEEN ADMINISTRATIVE (OR LEGISLATIVE) AND JUDICIAL PROCEEDINGS.

This distinction is relatively unimportant in this case; but if, as we contend, the review of the State Tax Commis-

sioner's assessment by both the Ordinary and the Supreme Court of New Jersey was a part of the administrative procedure for correcting the assessment, several questions raised by the appellees immediately disappear.

The appellees contend that the granting of an injunction would violate Section 265 of the Judicial Code.

We have shown that this is not the case even though the proceedings which have been held thus far might be judicial.

The proceedings have culminated in a corrected assessment, but the assessment cannot be translated into an enforceable judgment without the institution of a new and independent action.

However, if the proceedings before the Ordinary and the Supreme Court of New Jersey were administrative, then there cannot be the slightest doubt that an injunction may be granted in these cases without violating Section 265 of the Judicial Code.

The appellees contend that the appellants waited too long to institute proceedings before a three-judge court. They aver that the proceedings had reached a judicial stage and that the appellants must exhaust the State's judicial procedure and cannot now resort to a Federal court.

They also contend that the decision of the Supreme Court of New Jersey is res judicata and bars proceedings in the Federal Court.

We disagree with these contentions even if both the Ordinary and the Supreme Court of New Jersey acted judicially.

But clearly if the Ordinary and the Supreme Court of New Jersey acted administratively there is no merit whatever in the appellees' contentions.

Determination that the New Jersey procedure hitherto had was administrative rather than judicial would simplify the disposition of these appeals.

We believe that the procedure was administrative.

What is the test whether a proceeding is administrative or judicial?

As Mr. Justice Holmes said in the **Prentis Case**, whether proceedings are administrative or judicial "depends not upon the character of the body but upon the character of the proceedings." 211 U. S. at 226.

Thus, proceedings have been held administrative even though conducted before the highest court of a State. **Prentis v. Atlantic Coast Line Company**, 211 U. S. 210 (1908); **Oklahoma Natural Gas Company v. Russell et al.**, 261 U. S. 290 (1923).

And the same cases are authority for the statement that it is immaterial that the courts before which the proceedings came were constitutional courts as distinguished from statutory courts.

The same cases indicate that proceedings may be administrative even though they reached the court by appeal.

And proceedings may be administrative even though they reached the court by bill in equity. **Keller v. Potomac Electric Co.**, 261 U. S. 428 (1922); **Radio Commission v. General Electric Co.**, 281 U. S. 464 (1930); **Porter v. Investors Syndicate**, 286 U. S. 461 (1932).

And a proceeding may be administrative rather than judicial even though it was *inter partes* as distinguished from *ex parte*. **Prentis v. Atlantic Coast Line Company**, *supra*, **Oklahoma Natural Gas Company v. Russell**, *supra*, **Keller v. Potomac Electric Company**, *supra*.

What then are the tests to be applied?

We submit that an analysis of the cases indicates that a proceeding before a court is administrative when the Court is reviewing an action which is part of an administrative or legislative process, and

1. The action of the court is **intended** to be solely a revisory step in the administrative or legislative process. **Butterworth v. Hoe,** 112 U. S. 50 (1884); or

2. The decision of the Court, even though binding upon the legislative or administrative agency whose action is reviewed, is not final and binding upon any other parties before the Court. **Postum Cereal Co. v. California Fig Nut Co.,** 272 U. S. 693 (1927); **Butterworth v. Hoe,** *supra;* or

3. Although the determination to be reached is one calling for affirmative enforcement, the decision of the court cannot be enforced except through an independent judicial proceeding. **Kentucky and I. Bridge Co. v. Louisville & N. R. Co.,** 37 Fed. 567 (1889). Appeal dismissed, 149 U. S. 777 (1892); or

4. When the review extends beyond a mere power to reverse the action of the administrative or legislative agency on the ground that (a) the action exceeds the authority conferred on the agency; or (b) the action was based upon an erroneous principle of law; or (c) the action was based upon a finding of fact made arbitrarily or without supporting evidence; **Federal Radio Commission v. Nelson Brothers Co.,** 289 U. S. 266 (1933); and when the court if it disagrees with the action of the agency reviewed, has the power to perform the same kind of action as the agency

performs, and no more. **Prentis v. Atlantic Coast Line Co.**, 211 U. S. 210 (1908); **Keller v. Potomac Electric Power Co.**, 261 U. S. 428 (1922).

In the **Prentis Case**, at page 227, Mr. Justice Holmes said:

> ". . . **the effect of an inquiry, and of the decision upon it, is determined by the nature of the act to which the inquiry and decision lead up.** . . . all that we have said would be equally true if an appeal had been taken to the Supreme Court of Appeals [whose function in the case was held to be legislative] and it had confirmed the rate. **Its action** in doing so **would not have been judicial, although the questions debated by it might have been the same that might come before it as a court, and would have been discussed and passed upon by it in the same way that it would deal with them if they arose afterwards in a case properly so called . . .**"

In **Postum Cereal Co. v. California Fig Nut Co.**, *supra*, at p. 698, Chief Justice Taft said:

> ". . . The decision of the Court of Appeals under Section 9 of the Act of 1905 is not a judicial judgment. It is a mere administrative decision. **It is merely an instruction** to the Commissioner of Patents **by a court** which is made part of the machinery of the Patent Office **for administrative purposes. In the exercise of such function it does not enter a judgment binding parties in a case** as the term case is used in the third article of the Constitution. Section 9 of the Trade-Mark Act of 1905, applies to the appeal taken under it the same rules which under Section 4914 R. S. apply to an appeal taken from the decision of the Commissioner of Patents in patent proceedings. Butterworth v. Hoe, 112 U. S. 50, 60; Gaines v. Knecht, 27 App. D. C. 530, 532; Atkins v. Moore, 212 U. S. 285, 291. Neither the opinion nor

decision of the Court of Appeals under Section 4914 R. S., or Section 9 of the Act of 1905, precludes any person interested from having the right to contest the validity of such patent or trade-mark in any court where it may be called in question. This result prevents an appeal to this Court, which can only review judicial judgments. . . ."

In **Kentucky & I. Bridge Co. v. Louisville, N. R. Co.,** *supra,* at p. 612, the court said:

". . . But does the interstate commerce law undertake either to create an 'inferior court' or to invest the commission appointed thereunder with judicial functions? We think not. While the commission possesses and exercises certain powers and functions resembling those conferred upon and exercised by regular courts, it is wanting in several essential constituents of a court. Its action or conclusion upon matters of complaint brought before it for investigation, and which the act designates as the 'recommendation,' 'report,' 'order,' or 'requirement' of the board is neither final nor conclusive; **nor is the commission invested with any authority to enforce its decision or award.** Without reviewing in detail the provisions of the law, we are clearly of the opinion that the commission is invested with only administrative powers of supervision and investigation, which fall far short of making the board a court, or its action judicial, in the proper sense of the term. The commission hears, investigates, and reports upon complaints made before it, involving alleged violations of or omission of duty under the act; but subsequent judicial proceedings are contemplated and provided for, as the remedy for the enforcement, either by itself or the party interested, of its order or report in all cases where the party complained of or against whom its decision is rendered does not yield voluntary obedience thereto. . . ."

In **Radio Commission v. General Electric Co.**, 281 U. S. 464 (1930), this Court considered the function of the Court of Appeals of the District of Columbia in reviewing the decisions of the Radio Commission. The latter court was authorized to examine the record before the Radio Commission, to take additional evidence upon such terms and conditions as it might deem proper, to "hear, review and determine the appeal upon said record and evidence," and to "alter or revise the decision appealed from and enter such judgment as to it may seem just."

The Court held that this provision "does no more than make that court [the Court of Appeals of the District of Columbia] **a superior and revising agency in the same field.**"

Following this decision, Congress amended the Radio Act by limiting the review of the Court of Appeals to "questions of law." The amendatory statute provided "that findings of fact by the commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the commission are arbitrary or capricious."

In **Radio Commission v. Nelson Brothers**, 289 U. S. 266 (1933), it was held that the review by the Court of Appeals under the amended act was of a purely judicial character.

At page 276 Mr. Chief Justice Hughes said:

> ". . . **No longer is the Court entitled to revise the Commission's decision and to enter such judgment as the Court may think just.** The limitation manifestly demands judicial, as distinguished from administrative, review. Questions of law form the appropriate subject of judicial determination. . . . Whether the Commission applies the legislative standards validly set up,

> whether it acts within the authority conferred or goes beyond it, whether its proceedings satisfy the pertinent demands of due process, whether, in short, there is compliance with the legal requirements which fix the province of the Commission and govern its action, are appropriate questions for judicial decision. These are questions of law upon which the Court is to pass. . . . A finding without substantial evidence to support it—an arbitrary or capricious finding—does violence to the law. It is without the sanction of the authority conferred. And an inquiry into the facts before the Commission, in order to ascertain whether its findings are thus vitiated, belongs to the judicial province and does not trench upon, or involve the exercise of, administrative authority. Such an examination is not concerned with the weight of evidence or with the wisdom or expediency of the administrative action. . . ."

In **Keller v. Potomac Electric Power Co.**, *supra,* the District of Columbia Public Utilities Commission was empowered to fix rates of various utilities, make orders as to service, value the utilities, etc. Any person dissatisfied with its determination was authorized to commence a proceeding in the Supreme Court of the District, against the Commission, to vacate, set aside or modify the order. In the particular case, the Commission had not fixed a rate, but had made a valuation of the property of the utility.

This Court held that the action of the Supreme Court of the District was legislative, and not judicial, because it was not limited so as

> "to pass solely on questions of law, and look to the facts only to decide what are the questions of law really arising, or to consider whether there was any showing of facts before the Commission upon which, as a matter of law, its finding can be justified,"

but instead the court was intended to exercise its own opinion, and, as it saw fit, to revise the action of the Commission, and in revising it, to do the same things the Commission was to do. The Court concluded at page 442:

> " . . . We cannot escape the conclusion that Congress intended that the court shall revise the legislative discretion of the Commission **by considering the evidence and full record of the case and entering the order it deems the Commission ought to have made.**"

We have already referred to, and quoted from the opinion in **Porter v. Investors Syndicate**, 286 U. S. 461 (1932). We quote further, p. 468:

> " . . . The section confers the right to appeal to the State Supreme Court from the judgment of the trial court. Clearly the function of the State district court under the statutory mandate is not solely judicial, that is, to set aside a decision of the commissioner if arbitrary or unreasonable and hence violative of constitutional rights. **The duty is laid on the court to examine the evidence presented and either to set aside or to modify or to affirm the commissioner's order, as the proofs may require. The legislative process remains incomplete until the action of that court shall have become final. . . .** "

That a court, in tax cases, may have the duty of making an "administrative assessment" was recognized by Chief Justice Taft in **Bohler v. Callaway**, 267 U. S. 479 (1924), at p. 487.

IV.

THE NEW JERSEY ASSESSMENT PROCEDURE.

We have already outlined the New Jersey procedure for the assessment of inheritance taxes. (Ante, p. 16.)

The Function of the State Tax Commissioner.

The assessment is made by the State Tax Commissioner, —an administrative officer. Undoubtedly the assessment is an administrative act.

The Function of the Ordinary.

If a taxpayer is dissatisfied, he may, under Section 18 of the Transfer Inheritance Tax Law (Appendix, p. 123) appeal to the Ordinary.

The Ordinary's action is administrative under the first test stated on page 50.

The action of the Ordinary was intended by the Legislature of New Jersey to be solely a revisory step in the administrative process.

The courts of New Jersey have so held. In **Re Roebling's Estate**, 91 N. J. Eq. 72 (1919), 75; **Miller v. McCtucheon**, 117 N. J. Eq. 123, 175 Atl. 155 (1934); **Bugbee v. Van Cleve**, 99 N. J. Eq. 825 (1926).

In the first case cited, the Court of Errors and Appeals described the Ordinary as a "**legislative agent**" when reviewing inheritance tax assessments.

And in **Miller v. McCutcheon** the same court said:

> " . . . The Ordinary, in exercising the power conferred by the statute (supra) to hear and determine tax questions of this character, **is a statutory agent only**, and the power to review his act, as such, by certiorari is one vested in the Supreme Court by the Constitution and of which power that court cannot be divested by statute. Dufford v. Decue, 31 N. J. L. 302; Flanagan v. Treasurer of City of Plainfield, 44 N. J. L. 118; In re Prudential Ins. Co. of America, 82 N. J. L. Eq. 335 . . . "

Apparently the present case is the first in which the New Jersey authorities ever attempted to take the position that the action of the Ordinary is judicial in character, when he reviews assessments made by the State Tax Commissioner.

To our "Brief Contra Motion to Dismiss" these appeals heretofore filed with this Court, we appended (p. 36) an exact copy of a part of a brief filed by the Attorney General in another case now pending in the court below Attorney General Wilentz there concluded his argument,—to which we respectfully refer the court,—with the following sentence:

> "It is respectfully submitted that the right of review by the Prerogative Court **is simply a rounding-out of the entire legislative or administrative scheme for the assessment and collection of inheritance taxes,** and is such an administrative remedy as must be exhausted by plaintiffs before they may resort to a federal court."

The reasoning on which this conclusion was based is sound, as will appear by a mere reading of the Appendix to our Brief Contra Motion to Dismiss.

The following paragraph from the Attorney General's argument is particularly important (Appendix to Brief Contra Motion to Dismiss, p. 40):

> "The courts of this State have held that the reviewing court (prerogative) designated by Section 18 of the statute is a 'legislative agent' or 'legislative agency'.
>
> "*In re Roebling's Estate,* 91 N. J. Eq. 72, 75, 108 Atl. 359.
>
> "*Bugbee v. Van Cleve,* 99 N. J. Eq. 825, 835, 134 Atl. 646;

"which, incidentally, is a binding interpretation on the federal courts."

We shall not attempt any further argument to sustain the position taken by the highest court of New Jersey and hitherto by the Attorney General of New Jersey.

The Ordinary's function is administrative, not judicial.

The Function of the Supreme Court of New Jersey.

By the application of the third and fourth tests on page 50, the function of the Supreme Court of New Jersey in reviewing tax assessments is administrative and not judicial. And the second test may also be applicable.

The court's decree is not enforceable except through an independent judicial proceeding; and if the Supreme Court disagrees with the assessment made by the State Tax Commissioner, it may re-make the assessment or set it aside.

Whether an assessment confirmed by the Supreme Court can be questioned in a later independent judicial proceeding to collect the tax has never been decided. But in another case now pending in the court below, the Attorney General of New Jersey in his brief states that either in an action of debt to collect the tax, or a proceeding under Section 21 of the Transfer Inheritance Tax Act, "the tax payer may interpose any defense which he might think fit, including his non-liability to the tax in question." (Defendant's Brief in **Edwin C. Nevin et al. v. J. H. Thayer Martin**, Tax Commissioner of the State of New Jersey, et al., U. S. D. C., District of New Jersey, Equity No. 4805, p. 24,—Appendix "B", hereto, p. 128).

And it has been decided that when the taxpayer has failed to appeal to the Ordinary (or to the Supreme Court) and the period for such appeal has expired, he may nevertheless attack the validity of the assessment in a collection proceeding under Section 21 of the Transfer Inheritance Tax Act. **In re Vineland Historical Societ**, 66 N. J. Eq. 291 (1904); **In re Budell**, 100 N. J. Eq. 273 (1926).

We shall demonstrate how tests 3 and 4 (page 50) apply to this situation.

The Transfer Inheritance Tax Act of 1909 is silent as to any proceedings for contesting an assessment made by the State Tax Commissioner subsequent to a review by the Ordinary; but under the Constitution of New Jersey, the Supreme Court of that State is vested with the power to review upon certiorari all tax assessments made by the administrative agencies of the State.

In considering the function of the Supreme Court in reviewing tax assessments, the so-called Certiorari Act of 1907 is of the highest importance.

That act appears at page 127 of the Appendix.

It provides that:

> "In all cases of writs of certiorari now pending or hereafter brought to remove any tax or assessment, . . . or to review the proceedings of any special statutory tribunal, or to review the suspension, dismissal, retirement or reduction in rank of any person holding an office or position . . . from which he is removable only for cause and after trial, the courts shall determine disputed questions of fact, as well as of law, and inquire into the facts by depositions taken on notice, and in such other manner as is according to the practice of the

court; provided, either party may use the testimony taken before the tribunal, board or officer whose action is being reviewed which testimony shall be considered by the court the same as if it had been taken by deposition on notice and either party may take additional testimony. The court may reverse or affirm, in whole or in part, such tax or assessment or other order or proceeding, finding or determination, suspension, dismissal, retirement or reduction in rank reviewed."

The Certiorari Act has been sustained as constitutional. **Royal Manufacturing Company v. City of Rahway,** 75 N. J. L. 416 (1907).

In **Trenton & Mercer County Traction Corporation v. Mercer County Board of Taxation,** 92 New Jersey Law 398 (1918), the Court of Errors and Appeals reversed the action of the Supreme Court of New Jersey in a tax case on the ground that it confined its review of the facts to a consideration of the question whether there was any evidence to support the findings below. Judge Swayze said:

"The Supreme Court took too narrow a view of its functions in this case. It held that the judgment of the county board of taxation was not unreasonably or illegally reached and was supportable upon the facts and the figures adduced before it. This involved merely a determination that there was no erroneous legal principle shown to have been adopted by the county board, and that there was evidence to support its finding. But this determination was not a compliance with the mandate of the Tax Act or of the Certiorari Act. . . .

"Section 11 of the Certiorari Act as amended in 1907 (P. L. 95; 1 C. S. 405), requires the Supreme Court to determine disputed questions of fact in tax cases as well as in other cases therein set forth. . . . In the

present case the Supreme Court failed to make an independent determination of facts, and contented itself with finding that there was a legal basis for the result reached by the county board of taxation whether or not that result was right in fact. This error makes it necessary to reverse the judgment and remit the record to the Supreme Court in order that it may find the facts."

And in **Gibbs v. State Board of Taxes and Assessment,** 101 N. J. L. 371 (1925), Judge Katzenbach speaking for the Court of Errors and Appeals said:

". . . . Under section 11 of the Certiorari Act of 1903, as amended (1 Compiled Statutes of N. J. p. 405), power is given to the Supreme Court to determine disputed questions of fact, as well as law. The Supreme Court did not determine any question of fact as appears from the language of its opinion above quoted. The testimony taken in the case should, in our opinion, be reviewed. The case will therefore be remanded to the Supreme Court with the direction that it determine the disputed questions of fact."

In **Dubelbeiss v. West Hoboken,** 82 N. J. L. 683 (1912), the Court of Errors and Appeals considered the action of the Supreme Court in reviewing on certiorari the dismissal of a policeman by the town council of West Hoboken. The Supreme Court took and considered new evidence, reversed the policeman's dismissal and "ordered him to be restored in all things."

In sustaining the Supreme Court's action, Voorhees, J., speaking for the Court of Errors and Appeals said, at page 685:

"The question therefore is confined to the propriety of the reception and consideration of the additional testimony. The amendment of the Certiorari act of 1907 (Pamphl. L., P. 95) expressly provides for the

taking and consideration of such additional testimony, but aside from that statute, this court has determined that when the investigation of questions of fact is required for the proper review of ordinances or other municipal proceedings, the Supreme Court has power by its constitutional jurisdiction to consider such matters of fact, and that the statute is not the source of the existence of that power. Lighthipe v. Orange, 46 Vroom 365; Affirmed, 47 Id. 817.

"So, too, with reference to the entry of the judgment in the Supreme Court without ordering a new trial before the town council. The Supreme Court was right in ordering not only a judgment of reversal, but may enter such new judgment in that court as it appeared by the record that the tribunal below ought to have rendered. This is in consonance with the practice adopted by the Court of King's Bench and which has been approved by this court. State, Hoxsey, pros., v. City of Paterson, 10 Vroom 489; Smith v. Ocean Castle, 30 Id. 198.

"In addition, however, to this right, there is also the statutory warrant contained in the act of 1907, supra, for such judgment. That act provides that 'the court may reverse or affirm in whole or in part such . . . findings or determination, suspension, dismissal . . . reviewed.' "

In **Kearny v. State Board,** 103 N. J. L. 26 (1926), the Court of Errors and Appeals held that it was not obligatory upon the Supreme Court to set up such assessment as it felt proper, but that it might correct the assessment or set it aside and remand the case to the administrative agency for further proceedings.

But, in order to render the procedure administrative, the revision of the assessment by the court need not be mandatory.

In **Porter v. Investors Syndicate**, 286 U. S. 461 (1932), **Radio Commission v. General Electric Co.**, 281 U. S. 464 (1930) and **Prentis v. Atlantic Coast Line**, 211 U. S. 210 (1908), the phraseology of the statute rendered revision of the administrative or legislative action permissive only; but the court's function was nevertheless held to be administrative, and not judicial.

The function of the Supreme Court of New Jersey in assessment cases parallels exactly that of the Court of Appeals of the District of Columbia in passing on appeals from orders of the Radio Commission under the original Radio Act.

The court reviews the record of the State Tax Commissioner both as to fact and as to law; it may, on its own motion, cause additional testimony to be taken; it may permit the parties to take additional testimony; and it may re-make the assessment.

By no stretch of the imagination could the proceeding be regarded as an ordinary appeal.

The New Jersey procedure differs entirely from that of Pennsylvania, which was before this court in **City Bank Farmers Trust Company v. Schnader, et al.**, 291 U. S. 24 (1934).

Under the Pennsylvania procedure when an appeal is taken from an assessment made by the Register of Wills there is a hearing *de novo* in the Orphans' Court. At that hearing, as Mr. Justice Roberts said:

> "The Commonwealth becomes plaintiff and the taxpayer defendant, and the action is tried as an ordinary action, resulting in a judgment, which is final

and binding on the parties, subject only to appeal to a higher State court, as permitted by the act."

A typical illustration of the result of a Pennsylvania inheritance tax appeal is the judgment entered by the Court of Common Pleas of Dauphin County in **Commonwealth v. Johnston**, Executor, 25 Dauphin County Reports 404 (1922), at p. 409. It is:

> "Therefore, judgment is hereby directed to be entered in favor of the Commonwealth and against William Armour Johnston, Jr., Executor of the estate of William A. Johnston, Deceased, in the sum of $3649.83, unless exceptions be filed within the time limited by law."

Compare the decrees of the Prerogative Court (R. 99) and of the Supreme Court of New Jersey (R. 156) in the proceedings upon which appellees rely to defeat the jurisdiction of the court below.

An inheritance tax appeal in Pennsylvania becomes an ordinary trial of an issue, culminating, if the State wins, in a money judgment.

In New Jersey, an appeal to the Ordinary and later to the Supreme Court of New Jersey is merely an administrative review of the action of an administrative officer in making an assessment.

The Pennsylvania appeal ends in a **judgment.**

The New Jersey appeals end in an **assessment.**

The New Jersey procedure also differs materially from that which came before the Court in **Old Colony Trust Company, et al., v. Commissioner of Internal Revenue**, 279 U. S. 716 (1929).

That case involved the action of the Circuit Court of Appeals in reviewing determinations of the Board of Tax Appeals.

The Act (February 26, 1926, C. 27, Section 1003, 44 Stat. 110, 26 U. S .C. A., Section 1226), providing for review by the Circuit Courts of Appeals is simple and explicit. It provides:

> "Upon such review, such courts shall have power to affirm or, if the decision of the board is not in accordance with law, to modify or reverse the decision of the board, with or without remanding the case for a rehearing, as justice may require."

The authority of the court is strictly limited to affirmance, or to modification or reversal only in case the decision of the Board is not in accordance with law. The court is limited to a review of errors of law; its review of the facts can go no further than a determination whether there was substantial evidence to support the conclusion which the board has reached.

The case is the clear parallel of **Federal Radio Commission v. Nelson Brothers Co.**, *supra.*

But there are further apparent distinctions.

The action of the Court of Appeals (subject to review by certiorari in this Court) is final. Act of February 26, 1926, C. 27, Section 1003, 44 Stat. 110, 26 U. S. C. A. 1226, sub-section a.

And the final decision of the court is directly enforceable, without the intervention of any further judicial proceeding. See 279 U. S. at pages 725 to 727.

Clearly, the procedure before the Supreme Court of New Jersey is in the nature of an administrative review and is not a judicial proceeding.

V.

RES JUDICATA CANNOT BE SUCCESSFULLY PLEADED.

Appellees in their Answers (R. 51, 524), set up a plea of res judicata.

We submit that the plea is not good because:

1. To date the proceedings before the State Tax Commissioner, the Ordinary, and the Supreme Court of New Jersey have been administrative and not judicial in character;

2. Assuming for the sake of the argument, that the decision of the Supreme Court of New Jersey was judicial in character, it was not a final judgment of the highest court of a State, and the executors-appellants have not acquiesced in it;

3. Under the peculiar circumstances of this case, the usual rules of comity between Federal and State courts do not apply; and

4. Under the circumstances of this case, the appellant Mrs. Hill, who was not a party to the proceedings in the Supreme Court of New Jersey, should not be held in privity with the executors, as far as this litigation is concerned.

Administrative Review Is Not Res Judicata.

Assuming that the Court agrees with us that the New Jersey proceedings challenging the assessment have been administrative, the first reason is so obvious that argument in support of it would be superfluous.

Clearly an administrative review by a State court of an administrative act, cannot be pleaded as res judicata in a Federal court. **Prentis v. Atlantic Coast Line Co.**, 211 U. S. 210 (1908), 227.

If the Court agrees with our conclusion that the review of tax assessments on certiorari by the Supreme Court of New Jersey is administrative, our first reason is the only one which requires consideration.

If, however, the Court should not agree with us, nevertheless we submit that the decision of the Supreme Court of New Jersey is not res judicata as far as Federal proceedings are concerned.

The Decision of the Supreme Court of New Jersey Is Not a Final Judgment as Far as the Federal Courts Are Concerned.

In **Grubb v. Public Utilities Commission**, 281 U. S. 470 (1930), Grubb applied to the Public Utilities Commission of Ohio for a certificate to operate a line of passenger buses over certain public highways in Ohio as part of an interstate route. A hearing was had before the Commission, after which the requested certificate was granted; but it excluded a part of the route.

Thereupon Grubb applied for a re-hearing which was denied. Then Grubb brought a bill in equity against the Commission in the District Court of the United States under Section 266 of the Judicial Code, charging that the Commission's order was in violation of the Commerce Clause of the United States Constitution.

While the suit in the District Court was pending, the Supreme Court of Ohio rendered a decision sustaining the Commission's action.

We quote Mr. Justice Van Devanter's language at page 475:

> "After a hearing in which all of the parties participated the state court rendered a judgment sustaining and affirming the Commission's order in its entirety. 119 O. S. 264. **No effort was made to have that judgment reviewed by this Court, and after the three months allotted for applying for such a review had elapsed,** the defendants in the suit in the District Court, by leave of that court, interposed answers setting up the judgment as a bar to the further prosecution of the suit. A hearing upon this plea resulted in the decree now under review, which sustained the plea and dismissed the bill."

This Court sustained the action of the District Court. Mr. Justice Van Devanter said at page 476:

> "It next is said that the suit in the federal court was begun before resort was had to the state court, and therefore that the jurisdiction of the federal court was exclusive and precluded action in the state court. In this the appellant is invoking a rule which is applicable to suits dealing with specific property and involving actual or potential control over the same, where necessarily the court (whether federal or state) first obtaining jurisdiction of the res must hold it to the exclusion of another. Here the litigation was not of that class, but was of such a nature that it could proceed in both courts, in virtue of their concurrent jurisdiction, until there was **a final judgment** in one, Kline v. Burke Construction Co., 260 U. S. 226, when that judgment would become conclusive in the other as res judicata. Chicago, Rock Island & Pacific Ry. Co. v. Schendel, 270 U. S. 611, 616; Insurance Co. v. Harris, 97 U. S. 331, 336."

In **American Surety Company v. Baldwin**, 287 U. S. 156 (1932), the Surety Company sought to be relieved from

a judgment in favor of the Baldwins entered by an Iowa court and sustained by the Supreme Court of Iowa.

Suit was brought in the United States District Court for an injunction to stay execution on the judgment. The District Court refused the injunction and dismissed the bill. This Court, in an opinion by Mr. Justice Brandeis, sustained this action. At page 164 Mr. Justice Brandeis stated the reason for the decision as follows:

> ". . . For the Federal remedy was barred by the proceedings taken in the State court **which ripened into a final judgment** constituting res judicata."

In **Betts v. Railroad Commission of California**, 6 F. Supp. 591 (1933), a three-judge court (Wilbur, C. J., and McCormick and Cosgrave, D. JJ.), denied an interlocutory injunction because a final judgment had been rendered by the Supreme Court of California. At page 592, the Court said:

> "It is plain therefore that plaintiff presents here the identical questions passed upon by the Supreme Court of California, **and the decision of that court is now final**, and the matters therein adjudged cannot again be presented to any court for determination. . . ."

In **Eastern Building & Loan Ass'n of Syracuse v. Welling**, 103 Fed. 352 (D. C. S. C. 1900), a bill was filed in the federal district court to reform and foreclose a mortgage, which, it was alleged, owing to a mistake, did not include the entire contract. The defendant had previously brought an action against the plaintiff in the State courts under a State statute, giving a cause of action to a mortgagor against a mortgagee failing to enter satisfaction of a mortgage under which all obligations were performed.

The State court had sustained defendant, had been sustained by the highest court of the State, and plaintiff on certain constitutional grounds had petitioned for a writ of error from the Supreme Court of the United States. Defendant set up the judgment in the State court as a bar to the bill in the Federal court. This contention the Federal court overruled, saying, at p. 355:

> ". . . Assuming, for the sake of argument, that the controversy set up in this bill of complaint is the same as that which was agitated in the proceedings in the state court between these same parties, it cannot be said that the question is res judicata. The pleadings disclose the fact that the final judgment of the state supreme court has been removed by writ of error into the supreme court of the United States, and that it awaits adjudication in that court. Were it now held that the issue is res judicata,—a question finally settled beyond controversy,—the decision of the supreme court may perhaps be anticipated, or its conclusion be antagonized. **No controversy can be treated as res judicata until it has been finally discussed and decided in a court of last resort, or the result has been acquiesced in without resort to such a tribunal.** . . ."

In **Tampa Waterworks Co. v. City of Tampa**, 124 Fed. 932 (S. D. Fla. 1903), plaintiff had brought an action in a State court to restrain the city from enforcing an ordinance fixing rates allegedly infringing plaintiff's contract. The State trial court had overruled the city's demurrer and granted the injunction. The State Supreme Court, however, reversed the judgment, ordered the trial court to sustain the demurrer and permit further proceedings. The trial court thereupon dismissed the bill and plaintiff appealed to the State Supreme Court in order that it might render a final decision from which a writ of error might be

prosecuted to the Supreme Court of the United States. Pending such appeal plaintiff sought in a three-judge court an injunction against enforcement of the ordinance. The city contended that the State proceeding was a bar to the Federal proceeding. The contention was overruled on the ground that there was as yet no final decision of the Supreme Court of the State which could operate as res judicata. At page 936 Judge Pardee said:

> ". . . . *Lis pendens* in a state court does not bar proceedings between the same parties on the same cause of action in the federal courts. . . ."

In **McWilliams v. Hopkins**, 11 F. (2d) 793 (S. D. Cal., 1926) an action was brought in a Federal district court to determine rights under an oil lease. In opposition to the action it was set up that rights in the oil had been determined in an action between the same parties in an inferior State court. With reference to this contention the United States district court said, at page 796:

> "In the affidavits filed in opposition to the showing of plaintiffs on the application for the appointment of a receiver, it appears that in an action . . . tried in the superior court of Los Angeles county . . . the superior judge determined, under the particular contract here involved, that plaintiffs had no interest in the oil. That decision, so far as can be understood from the pleadings and judgment, was a direct adjudication against the very construction that plaintiffs are seeking to have enforced in this action. Judgment in that action is not yet final, and the cause is pending on appeal. If affirmed on appeal, that adjudication will be considered binding here; but **until it is final, it is a cause pending**, and not ground for abatement in the federal court. Counsel for plaintiffs have cited decisions of the Supreme Court clearly establishing that law."

In this case, the decision of the Supreme Court of New Jersey is not final, even though it be held judicial in character.

The executors have until February 11, 1936, to take their appeal to the Court of Errors and Appeals.

On February 13, 1935, they notified the State Tax Commissioner, informally, that they intended to appeal (R. 31).

They intend to appeal, unless the present action shall render an appeal unnecessary (R. 31).

In explanation of the executors' failure to have appealed as yet, a court of equity will undoubtedly consider as highly important the following circumstance which is before this Court.

By Act of the New Jersey Legislature the State Tax Commissioner was authorized to adjust the claimed tax against the Dorrance Estate "by the acceptance of the principal sum due and the remission of all interest due on such principal sum" (R. 25).

On February 15, 1935, the defendant State Tax Commissioner threatened the executors that if they prosecuted the New Jersey litigation to a finality he would refuse any relief in interest charges should the litigation result in the affirmance of the assessment. His letter stated that the amount of interest then due was $4,145,713.70 (R. 25).

This threat to penalize the estate if it took an appeal to the highest court of New Jersey is certainly sufficient to justify the executors in delaying the appeal.

This threat was tantamount to a demand that the executors pay the tax claimed by New Jersey whether it is constitutionally due or not. In substance **a penalty of more than $4,000,000 was threatened if the executors of the estate**

submitted the validity of the tax to the highest court of New Jersey.

In the court below, appellees cited text-books and cases to controvert our argument under this heading.

But appellees' argument overlooked the distinction between the applicability of the doctrine of res judicata in courts of the same jurisdiction, and its applicability as between Federal and State courts.

That distinction disposes of the text-book citations.

Of course it is true that if a judgment has been rendered by a New Jersey trial court, the same plaintiff cannot thereafter start another suit in another trial court in the same state, even though there is an appeal pending from the judgment rendered in the first suit. The parties must exhaust their appellate remedies in the first case and cannot, over objection, resort to a different tribunal of the same state for a retrial of the case.

But the situation is entirely different when the defendant in a Federal court attempts to plead a judgment of a State court as res judicata to bar further proceedings. He must show, as Judge Simonton said, that the State judgment is that of a court of last resort or else that the parties have acquiesced in the judgment of an inferior tribunal by not seeking a review in a higher court within the time allowed for such review.

Appellees in the court below cited **Detroit and Mackinac Railroad Company v. Michigan Railroad Commission**, 235 U. S. 402 (1914); **Napa Valley Electric Company v. Railroad Commission**, 251 U. S. 366 (1920); **State Corporation Commission of Kansas v. Wichita Gas Company**, 290

U. S. 561 (1934); and **Tait v. Western Maryland Railway Company**, 289 U. S. 620 (1933).

In all of these cases the State court decisions held to be res judicata were decisions of courts of last resort.

In **Detroit and Mackinac Railroad Company v. Michigan Railroad Commission**, 235 U. S. 402 (1914), the review by the Supreme Court of Michigan of the action of the Railroad Commission was held to be judicial. The parties had carried their case to that court and there had been a decision. Thereafter it was sought to present the same controversy to the Federal courts. Res judicata was properly pleaded successfully.

In **Napa Valley Electric Company v. Railroad Commission**, 251 U. S. 366 (1920), the plaintiff had carried its case to the highest court of California and that court had refused to review the action of the Railroad Commission. This Court held that such refusal constituted a judgment by the highest court of the state and accordingly sustained the plea of res judicata.

In **State Corporation Commission of Kansas v. Wichita Gas Company**, 290 U. S. 561 (1934), a bill in equity was filed in the District Court to set aside an order of the State Corporation Commission which this Court found was merely a preliminary step in aid of investigations for the ascertainment of the reasonableness of the gas company's rates.

At page 569, Mr. Justice Butler said:

> ". . . The order is therefore legislative in character. The Commission's decisions upon the matters covered by it cannot be res adjudicata when challenged

in a confiscation case or other suit involving their validity or the validity of any rate depending upon them . . ."

Obviously the decision has no bearing on the present controversy.

In **Tait v. Western Maryland Railway Company**, 289 U. S. 620 (1933) the question was whether a previous decision by a District Court, affirmed by the Circuit Court of Appeals, barred a second suit in the District court involving exactly the same tax question but for a different year. There can be no doubt of the correctness of this Court's decision that the judgment in the first suit barred a retrial of the identical question; and the case is a perfect illustration of the distinction between the plea of res judicata in courts of the same jurisdiction and the plea as between Federal and State courts.

In view of the **Napa Valley Electric Company Case**, this Court's action in **Lehigh Valley Railroad Company v. Board of Public Utility Commissioners et al.**, 278 U. S. 24 (1928) is most interesting and pertinent.

The New Jersey Board of Public Utility Commissioners made an order requiring the Lehigh Valley Railroad Company to eliminate two grade crossings in Somerset County, New Jersey.

The Company, represented by special counsel for the appellees in the present cases, applied to the Supreme Court of New Jersey for writ of certiorari, and a restraining order.

The Supreme Court denied the certiorari.

Then the Railroad applied to a three-judge court for an injunction.

After hearing, the three-judge court dismissed the bill.

On appeal this Court decided the controversy on the merits.

We submit that, clearly, the decision of the Supreme Court of New Jersey,—a decision in which the executors of the Dorrance estate have not acquiesced, and which may still be appealed to a higher court of New Jersey,—is not res judicata here even though it be held to have been judicial in character.

Neither Comity Nor Public Policy Requires a Plea of Res Judicata to Be Accepted in This Case.

The full faith and credit clause of the Constitution does not apply to the Federal courts. **Baldwin v. Iowa State Traveling Men's Association,** 283 U. S. 522 (1931).

Therefore, recognition by the Federal courts of a State court judgment, is a matter of comity, based upon public policy.

In this case, comity did not influence the Supreme Court of New Jersey to recognize a judgment of the Supreme Court of Pennsylvania.

That judgment was before the New Jersey court. It had been made a part of the record without objection on behalf of the State authorities. And it adjudicated the question whether Dr. Dorrance was domiciled in Pennsylvania at the date of his death.

By way of excuse for ignoring the Pennsylvania judgment, the Ordinary (R. 85), after admitting that the Pennsylvania inheritance tax proceeding was *in rem,* held that

> ". . . When it is demanded of the Courts of one State that full faith and credit be accorded to the judg-

ment of the Court of a sister State, 'an inquiry into the jurisdiction (of the latter Court) is always permitted, and if it be shown that the proceedings relied upon were without the jurisdiction of the Court, they need not be respected.' . . .

"Concededly, the Courts of Pennsylvania had no jurisdiction to assess and levy the tax in question unless the decedent was domiciled in Pennsylvania. It is therefore open to this Court, in the exercise of its right to inquire into the jurisdiction of the Pennsylvania Court, to inquire into, ascertain and determine whether or not the decedent was domiciled in Pennsylvania. . . ."

This conclusion was affirmed by the Supreme Court of New Jersey (R. 156).

If the Pennsylvania proceedings were *in rem*, and if the New Jersey proceedings eventuated in a judgment for inheritance tax (which we deny), the latter was also *in rem*.

If the New Jersey courts could properly inquire into the facts of domicile, before determining whether a judgment of the Supreme Court of Pennsylvania should be recognized, surely the Federal courts can do likewise before determining whether the decree of the Supreme Court of New Jersey (if it is a judgment), should be recognized.

It is a poor rule which does not work both ways!

And in any event, as Mr. Justice Holmes said in the **Prentis Case**, at 211 U. S. 293,

". . . Rules of comity or convenience must give way to constitutional rights . . ."

Clearly the Federal courts are not compelled by constitutional mandate, to recognize as res judicata, the judg-

ment of a court of intermediate appeal of a State, when the State law permits a further appeal, and the losing parties have unmistakably signified their intention of taking such appeal within the time allowed by law.

In this case the threat of the State Tax Commissioner of New Jersey, (R. 25) that he would penalize appellants for "any further prosecution of the litigation," amply justified the executors in seeking immediate relief in the Federal courts.

The recognition of final State court judgments as a bar to litigation in the Federal courts, rests upon the sound public policy that there should be an end to litigation.

But refusal of injunctions in these cases will not have that effect.

The course of litigation will not have come to an end, if injunctions be refused in these cases. It will be much longer than if the court below be directed to proceed to a hearing.

And, in the former event, should the case reach this Court,—either at the conclusion of the assessment proceedings or at the conclusion of the collection proceedings, or both,—it would be compelled to review the facts and the law to reach a conclusion as to the domicile of the decedent.

The most expeditious ending of the litigation will be through a hearing in the court below, and a subsequent review by this Court of the three-judge court's action.

In **Prentis v. Atlantic Coast Line**, 211 U. S. 210 (1908), Mr. Justice Holmes said, at page 228:

> ". . . If the railroads were required to take no active steps until they could bring a writ of error from this court to the Supreme Court of Appeals after a final judgment, they would come here with the facts already

found against them. But the determination as to their rights turns almost wholly upon the facts to be found. . . ."

And in **Willcox et al. v. Consolidated Gas Company**, 212 U. S. 19 (1909), at p. 40, Mr. Justice Peckham, in discussing the **Prentis Case**, said:

". . . In the latter case it was said that a plaintiff could not be forbidden to try the facts upon which his right to relief is based before a court of his own choice, if otherwise competent. . . ."

The present case is one which ultimately turns on the facts found. Appellants have a right to have the facts found by a Federal court, under the circumstances here present.

Thus far there has been no trial at which evidence was taken by a court, except in Pennsylvania. This is not a case in which, after a trial in a State court, the plaintiffs are seeking to shift to a Federal court.

There has been no trial in New Jersey.

And, we submit, the appellants are entitled to their day in court on the facts of this case.

As to Appellant Mrs. Hill.

Appellant Mrs. Hill is a legatee of the decedent. Against her interest in the estate an assessment has been made in the sum of $1,566,925.01 (R. 29).

Collection of the claimed tax by the appellees, will deprive her of income greatly exceeding $3,000 (R. 29).

And between Mrs. Hill and appellees, diversity of citizenship exists (R. 3).

Clearly if she has a right to maintain an independent action, she is not bound by the litigation heretofore conducted by the executors in New Jersey.

We later discuss Mrs. Hill's right to maintain her suit. See page 106.

Probate Is Not Res Judicata.

In the court below, appellees contended, in varying language, that the Surrogate of Burlington County made a finding, or adjudicated, or decided "on the question of domicil that the domicil of the decedent was in Burlington County, New Jersey".

The Surrogate did nothing of the kind.

His "Order for Probate" appears at R. 131. It will be read in vain to find any expression on the question whether decedent was domiciled in New Jersey.

In addition, probate of the will in this case was ex parte; and the appellant Elinor Dorrance Hill was not a party to the proceedings.

That an order for probate cannot be res judicata on the question of domicile has been squarely decided by this Court.

In **Thormann v. Frame**, 176 U. S. 350 (1900), it was held that the issuance of letters of administration by a probate court in no sense precluded a later determination of the decedent's domicile (in that case for the purpose of determining the validity of decedent's will). The Court said, at page 354:

> ". . . the proceeding . . . amounted to no more than an *ex parte* application for letters of administra-

tion and a grant thereof. . . . nor can the bare appointment be held, on principle or authority, to foreclose inquiry into the fact of domicil in the courts of another sovereignty."

In addition, it was held that the appointment was in any event open to inquiry as to the jurisdiction of the appointing Court.

This decision was followed in **Baker v. Baker, Eccles & Company**, 242 U. S. 394 (1917).

Both the result and the language in **Thormann v. Frame** are applicable to the situation here. Appellees admit that unless decedent died domiciled in Burlington County the Surrogate was without jurisdiction. The proceeding was ex parte; no contest of decedent's domicile was made.

The only cases in which an allowance of probate has been held to bar later collateral proceedings are those in which persons securing, or not contesting probate, were prevented from attacking the decree of probate by contesting the validity of the will. The estoppel is not by judgment, but by conduct in the course of what amounts to a continuous and single subject of litigation. Such a rule can obviously have no relation to an action to determine liability to tax, an action in no sense connected with the will, its validity, or the propriety of its probate.

In **In re Mesa's Estate**, decided by the Surrogate in 149 N. Y. S. 536 (1914), affirmed by the Appellate Division in 159 N. Y. S. 59 (1916), and by the Court of Appeals in 219 N. Y. 566 (1916), the New York courts squarely held that the fact that probate of a will had been allowed in New York was without relation to the question (raised in the

New York courts), whether the decedent was domiciled in New York for purposes of assessment of a transfer inheritance tax. It was pointed out by the Surrogate (149 N. Y. S. at page 544) that

> "The proceeding to fix the transfer tax is an independent proceeding. It is a familiar rule of procedure in courts of justice that parties to the same proceeding are not permitted in the same proceeding to take inconsistent positions at the same moment. This is only the paraphrase of the fundamental canon of logic on which all accurate reasoning and procedure are based, that the same proposition or affirmative assertion cannot at the same time be true and not true, exist and not exist. In other words, contradictories are incompatible at the same moment. But this rule does not prevent an inquiry into the real domicile in this proceding."

And the Appellate Division (159 N. Y. S. at page 65) pointed out that in cases cited to sustain the contention that probate was a bar:

> ". . . the plaintiffs in the respective actions were attacking the jurisdiction of the Surrogate's Court and seeking to treat as a nullity its decree. No right which they sought to assert could be maintained as long as the decrees in question remained in full force and effect. Here the respondent does not attack the jurisdiction of the Surrogate's Court of New York county nor seek to set aside, disregard, nor in any way qualify or limit the decree admitting the decedent's will to probate. . . ."

Moreover, the situation here presented is in another particular definitely distinguished from cases in which probate has been held a bar. In such cases the bar is set up only as between parties interested in the probate proceeding.

Here it is sought to be set up by the State of New Jersey, an utter stranger to the probate proceeding. In

In re Mesa's Estate, the Appellate Division observed (159 N. Y. S. at pages 66-67),

". . . Furthermore, the state of New York was not a party to the proceeding for the probate of the decedent's will. In the cases relied on by appellant the question of estoppel arose between those who had either been parties to the original decree or privies of such parties.

"Estoppel has been defined as:

"'An admission or determination under circumstances of such solemnity that the law will not allow the fact so admitted or established to be afterwards drawn in question between the same parties or their privies.' Sly v. Hunt, 159 Mass. 151, 34 N. E. 187, 21 L. R. A. 680, 38 Am. St. Rep. 403.

"In relation to judgments the rule is as follows:

"'As a memorial of the fact of the rendition of judgment the record imports absolute verity, and may be impeached by no one, whether or not a party to the proceeding in which it was made. As a judgment, on the other hand, the record has the further effect of precluding a re-examination into the truth of the matters decided; but in this aspect it is a rule binding only on parties to the proceeding and their privies. This further and secondary effect of the record considered as a judgment is otherwise known as estoppel by judgment, the matters adjudicated being termed res adjudicata.' 16 Cyc. 685."

And in **Brigham v. Fayerweather**, 140 Mass. 411 (1886), Mr. Justice Holmes held that an allowance of probate could not be set up as foreclosing the question of testator's mental capacity by one seeking to maintain the enforcibility of a contract made by the decedent, saying (at page 414),

". . . Still less do we see why, if the probate is not evidence against a party who had no right to be heard, he should hold the executor bound by it when he himself is free. Ordinarily, estoppels by judgment are mutual."

VI.

THE LAW OF DOMICILE.

The rules governing the acquisition of a new domicile by an individual are clear-cut. They have been established by a line of decisions of this Court extending over a period of many years. In general they are to the effect that a change of domicile arises when an individual establishes his dwelling place and family home at the new location, without any present intention of changing it to another place, or, stated differently, without any present intention of not residing there indefinitely. The fact of residence, and the requisite intention to remain there indefinitely must concur.

These rules find their roots in **Shelton v. Tiffin**, 6 How. 163, 185 (1848); **Ennis et al. v. Smith et al.**, 14 How. 400 (1852), particularly at page 422, and **Mitchell v. United States**, 21 Wall. 350 (1874), where at page 353, Justice Swayne said:

> "To constitute the new domicile two things are indispensable: First, residence in the new locality; and, second, the intention to remain there. The change cannot be made except *facto et animo*. Both are alike necessary."

For other cases to the same effect, see **Chicago & Northwestern Railway Co. v. Ohle**, 117 U. S. 123 (1886); **Morris v. Gilmer**, 129 U. S. 315, 328 (1889); **Sun Printing and Publishing Association v. Edwards**, 194 U. S. 377, 383 (1904); and

particularly, **Williamson v. Osenton**, 232 U. S. 619, 624, 625 (1914).

The latest expression of this Court on this subject was in **Gilbert v. David**, 235 U. S. 561 (1915). At page 569 Mr. Justice Day said:

> "This matter of domicile has been often before this court, and was last under consideration in the case of Williamson v. Osenton, 232 U. S. 619, *supra* In that case the definition of domicile, as defined by Mr. Dicey, in his book on 'Conflict of Laws,' 2d ed., 111, is cited with approval. There change of domicile is said to arise where there is a change of abode and 'the absence of any present intention to not reside permanently or indefinitely in the new abode.' Or, as Judge Story puts it in his work on 'Conflict of Laws,' 7th Ed., sec. 46, page 41, 'If a person has actually removed to another place, with an intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is to be deemed his place of domicile, notwithstanding he may entertain a floating intention to return at some future period.' 'The requisite animus is the present intention of permanent or indefinite residence in a given place or country, or, negatively expressed, the absence of any present intention of not residing there permanently or indefinitely.' Price v. Price, 156 Pa. St. 617, 626."

The concluding paragraph of the opinion is as follows:

> "It is apparent from all the testimony that the plaintiff may have had, and probably did have, some floating intention of returning to Michigan after the determination of certain litigation and the disposition of his property in Connecticut should he succeed in disposing of it for what he considered it worth. But as we have seen, a floating intention of that kind was not enough to prevent the new place, under the circum-

stances shown, from becoming his domicile. **It was his place of abode which he had no present intention of changing, that is the essence of domicile."**

Since the decision in **Gilbert v. David**, *supra*, was handed down in 1915, it has been cited in a great many cases as the leading Federal authority upon the subject of change of domicile.

For examples, see:

Pass v. United States, 256 Fed. 735, 737 (C. C. A. 9th, 1919); **United States v. Knight**, 291 Fed. 129, 134 (D. Mont., 1923); **Stockyards National Bank v. Bragg**, 293 Fed. 879, 883 (C. C. A. 8th, 1923); **Edwards v. United States**, 7 F. (2d) 357, 361 (C. C. A 8th, 1925); **Bowring v Bowers**, 24 F. (2d) 918, 920 (C. C. A. 2nd, 1928); and **Rosenberg v. Commissioner of Internal Revenue**, 37 F (2d) 808, 810 (App. D. C., 1930).

The rules established by this Court are applied almost universally both in this country and abroad. They are in accord with the principles adopted by the American Law Institute, May 11, 1934, in its **Restatement of the Law of Conflict of Laws.** The following sections of the Restatement enunciate the rules governing change of domicil:

"Sec. 15. **Domicil of Choice.**

"(1) A domicil of choice is a domicil acquired, through the exercise of his own will, by a person who is legally capable of changing his domicil.

"(2) To acquire a domicil of choice, a person must establish a dwelling-place with the intention of making it his home.

"(3) The fact of physical presence at a dwelling-place and the intention to make it a home must concur;

if they do so, even for a moment, the change of domicil takes place.

"(4) A person can acquire a domicil of choice only in one of three ways:

"(a) having no home, he acquires a home in a place other than his former domicil;

"(b) having a home in one place, he gives it up as such and acquires a new home in another place;

"(c) having two homes, he comes to regard the one of them not previously his domicil as his principal home."

"Sec. 16. **Requisite of Physical Presence.**

"To acquire a domicil of choice in a place, a person must be physically present there; but a home in a particular building is not necessary for the acquisition of a domicil."

"Sec. 18. **Requisite of Intention.**

"A person cannot change his domicil by removal to a new dwelling-place without an intention to make the new dwelling-place his home."

"Sec. 19. **Nature of Intention Required.**

"The intention required for the acquisition of a domicil of choice is an intention to make a home in fact, and not an intention to acquire a domicil."

The following illuminating comment upon this section appears at page 38:

"Comment:

"**a. Intention to make home and desire to acquire domicil.** A person sometimes desires to have his domicil in a certain place, in order to get the benefit of one or more of the legal consequences of having a domicil

there, but does not wish to change his home to that place; this desire to have a domicil in a certain place has no effect in fixing his domicil there. So, too, the desire to retain an old domicil is not controlling if in fact a new one has been acquired under the rules stated . . ." in this Restatement.

"Sec. 20. **Present Intention.**

"For the acquisition of a domicil of choice the intention to make a home must be an intention to make a home at the moment, not to make a home in the future."

The cases we have cited and the sections of the **Restatement** just quoted establish conclusively that the tests to be applied in determining whether a change of domicile of an individual has been effected are principally two in number; (1) establishment of his principal home in the new place, (2) without any present intention not to reside there indefinitely. Consequently, when the deceased in the present case established his principal family home in Radnor without any present intention not to reside there indefinitely, he could not, by following the simple expedients of declaring in various instruments, including his will, that he was domiciled in New Jersey and of continuing to vote in New Jersey, prevent the change of his legal domicile to Pennsylvania. And this is the more obvious, when the apparent purpose of the declarations and the voting is to prevent the change of domicile despite the acquisition of a new principal home with the requisite intention to remain there indefinitely. No doctrine in the law of domicile is more clearly established than the rule that a mere desire to have a domicile in one place, however frequently expressed, cannot overcome the legal effect of a man's acts and intention which result in a domicile elsewhere. As

has been so well said in the comment to Section 19 of the **Restatement**, a person's "desire to have a domicil in a certain place has no effect in fixing his domicil there. So, too, the desire to retain an old domicil is not controlling if in fact a new one has been acquired under the rules stated . . ."

We make mention here of **In the Matter of the Estate of James A. Trowbridge** (The State of Connecticut, Appellant; The State Tax Commissioner of New York, Respondent), 266 N. Y. 283 (1935) because its facts are almost identical with those of the present case and because the decision is probably the latest authoritative statement by a leading State court following the general rules of change of domicile. There the decedent had voted in New York, attended business there almost daily and had investments largely in its bonds and bonds of its municipalities, declared in his will and in innumerable other documents that he was a resident of New York, and in general unquestionably desired to be and, relying upon the legal advice of his counsel, believed that he was, legally domiciled in New York. Nevertheless, the Court of Appeals held that the decedent at the time of his death was domiciled in Connecticut.

In the court below, appellees claimed to "have reduced to a few simple rules," the principles followed by this Court in **Shelton v. Tiffin**, 6 How. 163 (1848), **Ennis v. Smith**, 14 How. 400 (1852), **Jones v. League**, 59 U. S. 76 (1855), **Pennsylvania v. Ravenel**, 62 U. S. 103 (1858), **Mitchell v. United States**, 88 U. S. 350 (1874), **Desmare v. United States**, 93 U. S. 605 (1877), **Chicago & N. W. R. Co. v. Ohle**, 117 U. S. 123 (1886), **Morris v. Gilmer**, 129 U. S. 315 (1889), **Penfield v. Chesapeake, O. & S. W. R. Co.**, 134 U. S. 351 (1890), **Anderson v. Watt**, 138 U. S. 694 (1891), **Sun P. &**

P. Ass'n. v. Edwards, 194 U. S. 377 (1904), **Williamson v. Osenton**, 232 U. S. 619 (1914) and **Gilbert v. David**, 235 U. S. 561 (1915).

The rules were stated to be:

"1. A residence at a particular place, accompanied with positive or presumptive proof of continuing it an unlimited time.

"2. A domicile once obtained, remains until another is acquired.

"3. A change of domicile requires the actual removal from the former domicile and an intention to abandon the old domicile.

"4. A person may have more than one residence but he cannot have more than one domicile.

"5. If a person has two or more residences at different times of the year, that will be esteemed his domicile which he himself selects, or describes or deems to be his home, and where he votes or exercises the duties of a citizen.

"6. A person is at liberty to choose his domicile, and his motive is unimportant if he acts in good faith.

"7. The burden of proof of change of domicile rests upon him who alleges such change."

The first, second, and fourth of these rules may be accepted as correct. The seventh clearly has no place upon a motion for preliminary injunction. The third, fifth and sixth points state rules of law supported by no Federal case we know; and they are certainly not recognized by this Court today.

We have found no case decided by this Court which supports a rule that a change of domicile requires "an

intention to **abandon** the old domicile." And certainly the Restatement contains no such rule. The intention required is an intention to remain permanently or for an indefinite period of time at the new abode, **Ennis v. Smith**, 14 How. 400, 423 (1852); **Mitchell v. United States**, 21 Wall. 350, 352 (1874); and **Sun Printing & Publishing Ass'n v. Edwards**, 194 U. S. 377, 383 (1904); or differently stated, the absence of any present intention not to reside there permanently or indefinitely, **Morris v. Gilmer**, 129 U. S. 315, 328 (1889); **Williamson v. Osenton**, 232 U. S. 619, 624, 625 (1914); and **Gilbert v. David**, 235 U. S. 561, 569 (1915).

And certainly no Federal decision has held that in any case in which "a person has two or more residences at different times of the year, that will be esteemed his domicile which he himself selects, or describes or deems to be his home, and where he votes or exercises the duties of a citizen." If that were so, every person occupying a home at a seashore resort for a month or two during the summer season could by the simple expedient of declaring that to be his home and voting there, render it his domicile.

An equally absurd result would be obtained by adherence to the rule that "A person is at liberty to choose his domicile." A mere statement of choice would then be conclusive.

It is quite clear that the cases now to be discussed, cannot in any way be regarded as supporting rules 3, 5, or 6 as formulated by appellees.

In **Shelton v. Tiffin**, 6 How. 163 (1848), the defendant contended that he was a citizen of Virginia and not of Louisiana. For two years he and his wife had been living on and cultivating a plantation in Louisiana. They had built a more comfortable home upon it and had absented

themselves only once for a short period to go to Mississippi. The case does not state that the defendant even retained a purported home in Virginia, but merely refers to a statement to a witness to the effect that he sometimes spoke of returning to that state. Of course the Court, without extended discussion, held that the defendant was domiciled in Louisiana. In the court below, appellees taking advantage of an apparent misprint, quote with other portions of the opinion, the following statement:

> "An exercise of the right of suffrage is conclusive on the subject; but acquiring a right of suffrage, accompanied by acts which show a permanent location, unexplained, may be sufficient."

Obviously, the Court meant to say:

> "An exercise of the right of suffrage is **not** conclusive . . ."

As a matter of fact, the defendant had never voted in Louisiana. Yet the Court held he was domiciled there.

In **Ennis v. Smith**, *supra*, the Court said at page 423:

> " . . . there must be to constitute it (a domicile of choice) actual residence in the place, with the intention that it is to be a principal and permanent residence."

Appellees' attempt to interpret the case as placing especial importance upon oral declarations is unsound. There was no evidence whatever of a domicile elsewhere. Thus, at page 423 the Court said:

> " . . . There is nothing in the record disproving his domicil in France, and we must, from his own declarations and other proofs in the record, receive it as a fact that he was domiciled there at the time."

In **Mitchell v. United States**, *supra*, this Court said that a change of domicile is effected when there is

> "A residence at a particular place with . . . an intention to remain there for an unlimited time."

The requisite intention is not an intention to abandon the former domicile, as defendants contend.

In **Chicago & Northwestern Ry. Co. v. Ohle**, 117 U. S. 123 (1886), the Court approved a particular portion of the charge of the lower court to the effect that if the plaintiff went to Illinois with the intention of remaining and acquiring citizenship there, he became a citizen of Illinois and could institute suit in the Federal courts. The jury found that a change of citizenship had been effected.

In **Morris v. Gilmer**, *supra*, at page 328, the language of the Court is decisive as to the intention required to effect a change of domicile. It is as follows:

> "He went to Tennessee without any present intention to remain there permanently or for an indefinite time, but with a present intention to return to Alabama as soon as he could do so without defeating jurisdiction of the Federal court . . . He was, therefore a mere sojourner in the former State . . . "

In **Sun Printing & Publishing Assn. v. Edwards**, *supra*, the Court said at page 383:

> "Now, it is elementary that, to effect a change of one's legal domicil, two things are indispensable; first, residence in a new domicil; and, second, the intention to remain there."

In the leading case of **Williamson v. Osenton**, *supra*, the Circuit Court of Appeals certified to this Court the ques-

tion of the domicile of the plaintiff who had gone to Virginia "with the intention of making her home in that State for an indefinite time in order that she might institute this suit." The Court held that the plaintiff's domicile had shifted to Virginia.

We have fully discussed and quoted from **Gilbert v. David**, *supra*. It is the most recent, and now the leading, pronouncement of this Court on the rules governing change of domicile.

Jones v. League, *supra*, is utterly irrelevant. The decision turns upon whether a conveyance of title by an owner of a tract of land was bona fide so that the resulting suit in the Federal court by the transferee, as a citizen of another State, was allowable. The Court found that the transfer had not been bona fide since the suit was actually for the original owner's benefit and therefore held there was no diversity of citizenship. The words "domicile" or "residence" are nowhere mentioned in the opinion, and the only possible connection with our discussion is a dictum to the effect that to accomplish a change of citizenship, a bona fide intention to become a citizen of the State to which a person removes is necessary.

In **Pennsylvania v. Ravenel**, *supra*, the sole question before the Court was whether in its charge to the jury the court below had taken the determination of the facts of domicile from the jury. This Court held it had not. The Court did not pass on the statement of the law of domicile by the lower court or itself say anything upon the subject. It is incorrect to say, as appellees did, in the court below, that the Court held that there was nothing in the lower court's charge which was objectionable. At page 110, this Court said:

"The court then stated to the jury the principles of law applicable to the question of domicil, **to which no exception has been taken.**"

Desmare v. United States, *supra,* merely holds that since there was no proof whatever of a change of domicile, Desmare's former domicile continued. Of course, since he was asserting a change of domicile without any proof whatever of change of residence, the burden of proving a change of domicile was upon him.

In **Penfield v. Chesapeake & S. W. Ry. Co.,** *supra,* the sole question was whether plaintiff was a "resident" of New York state within the meaning of that word as used in a statute of limitations. At page 359, the Court said:

> "Assuming, without deciding, that the testimony introduced for the plaintiff in the present case would warrant the impression that he had obtained a domicil in the state of New York . . ., there is nothing in the evidence which had the slightest tendency to show that his own actual residence was in the state of New York . . . ."

It is apparent, therefore, that that case cannot be cited as authority in this proceeding.

In **Anderson v. Watt,** *supra,* the Court held that a wife's domicile is that of her husband. It was not disputed that defendant's husband was domiciled in New York and the Court therefore held that defendant (his wife) was also domiciled there. The case has no other significance.

In the court below, appellees also referred to **The Venus, Rae, Master,** 8 Cranch 253 (1814).

This is a very early case growing out of the War of 1812. The question was whether the owner of a seized

vessel was domiciled in England. The Court stated the rules governing change of domicile followed by the later cases. At page 29, Justice Washington said:

> "If it sufficiently appear, that the intention of removing was to make a permanent settlement, or for an indefinite time, the right of domicil is acquired by a residence even of a few days."

In certain types of case, it has been held that the law of domicile is determined by the law of the forum. Thus in cases of divorce or of probate of wills this principle has been followed. But it has never been the rule in determining the jurisdiction of Federal courts or in enforcing rights arising under the Constitution or laws of the United States. Thus of the cases we have discussed on domicile, not one resorts to the decisions of the courts of either of the two states involved to arrive at the law of domicile.

To hold that in cases like the present the law of domicile is determined by the law of the forum would be to render meaningless the recent decisions of this Court in **Farmers Loan & Trust Co. v. Minnesota**, 280 U. S. 204 (1930), **First National Bank of Boston v. Maine**, 284 U. S. 312 (1932), holding that only the state of domicile may levy inheritance tax upon the intangible personal property of a decedent. If the law of domicile were held to be the law of the forum, the number of states which could tax the intangible personalty of a decedent would be the number whose laws of domicile enabled or compelled its courts to hold that decedent had been domiciled there at the date of his death. This would render inevitable the very result which the recent decisions were intended to render impossible and which they have held to be unconstitutional.

The real question involved in the present case is the situs of property for inheritance taxation. This Court is now unequivocally committed to the proposition that only one state may levy inheritance tax against any kind of property, tangible or intangible. That state is the state of the situs of the property.

In the case of situs of tangible personal property for inheritance tax purposes, the determination of the question depends upon the location of the property; and the courts have never held that this is determined by the law of the forum. (See **City Bank Farmers Trust Co. v. Schnader**, 293 U. S. 112 (1934)).

In the case of situs of intangible personal property for inheritance tax purposes, the determination of the question depends upon the domicile of the owner at the time of his death. It would be just as impossible to hold that this is determined by the law of the forum.

The law to be applied is the general law of domicile as stated by this Court. Certainly the determination of situs for taxation in cases arising under the Constitution of the United States calls for the application of Federal rules.

The Law Applied to the Facts.

Under the rules of domicile enunciated again and again by this Court, it cannot be doubted, upon a proper consideration of the facts stated in our injunction and reply affidavits, that Dr. John T. Dorrance at the date of his death was domiciled in Pennsylvania. The rules stated in the **Restatement of the Law of Conflict of Laws** reinforce this conclusion.

It certainly cannot be seriously argued that these facts do not make out a *prima facie* case of domicile in Penn-

sylvania, for purposes of a motion for preliminary injunction.

We respectfully refer the Court to pages 7 to 16 of this brief.

Appellees, however, apparently intend to argue that an injunction should not be granted because, they say, the individual executors,—Mrs. Dorrance, George Morris Dorrance, M. D., and Arthur C. Dorrance,—testified in Pennsylvania, to certain facts which they were then advised, established Dr. Dorrance's domicile at the time of his death, in New Jersey.

We submit that the present cases are not appeals on the merits, and that the testimony in the Pennsylvania case is not properly a part of this record.

But if we are mistaken, and this Court should regard as relevant here, an analysis of the Pennsylvania testimony, we shall have no difficulty in showing that none of the facts to which the executors testified, were substantially at variance with the facts pleaded in the bills of complaint in the court below, and contained in the plaintiffs' injunction and reply affidavits.

VII.

APPELLANTS ARE NOT ESTOPPED TO MAINTAIN THEIR ACTIONS IN THE COURT BELOW.

In the Court below appellees argued that the appellant, Mrs. Hill, is estopped to bring this suit because she accepted her legacy under her father's will.

Therefore, appellees say, Mrs. Hill cannot question their right to collect inheritance tax from her.

And as to the executors, the appellees argue that they also are estopped because they probated decedent's will in

New Jersey and resisted the efforts of Pennsylvania to collect inheritance tax from them.

We respectfully submit that neither the appellant, Mrs. Hill, nor the executors-appellant, are debarred by any estoppel from maintaining their respective actions in the Court below.

Neither the appellees nor the State of New Jersey gave Mrs. Hill her legacy. She did not accept it from them.

And the decedent did not by his will require his legatees to submit to double transfer inheritance taxation. Thus Mrs. Hill is not violating, or attempting to set aside, any provision of the will under which she has taken her legacy.

By accepting her legacy under the will, Mrs. Hill has been receiving and will receive less than the share of the estate to which she would be entitled under the intestate laws either of New Jersey or of Pennsylvania.

As far as the executors are concerned, the situation is much the same.

The executors are merely fiduciaries. They are not dealing with their own property. Surely any acts of theirs could not be held to penalize the interests of beneficiaries as yet unborn, even if the living beneficiaries who are *sui juris*, and the guardians of those who are minors, might, by some perversion of justice, be penalized.

After all, what have the executors done which should estop them from resisting double transfer inheritance taxation? Let us see.

The will required them to offer it for probate in New Jersey. They did so.

Pennsylvania claimed transfer inheritance tax. The executors knew that the decedent desired himself to be regarded as domiciled in New Jersey, and wished his estate administered there. Accordingly, they bitterly contested Pennsylvania's claim. But Pennsylvania's claim was sustained.

Pennsylvania moved to collect the tax before any step was taken by the taxing officers of New Jersey.

When the New Jersey taxing officers did assess the estate, the executors **because of the pendency of the Pennsylvania claim,** requested that the assessment be opened. The New Jersey authorities acquiesced, and co-operated with the executors in fighting Pennsylvania. This was disclosed by counsel for the defendants at the oral argument in the court below. He stated that he had conferred many times with counsel for the executors regarding the Pennsylvania litigation.

It was only after the Supreme Court of Pennsylvania had held that Dr. Dorrance was domiciled in that State, that the executors asserted in the New Jersey proceedings that the decedent was not domiciled in the latter State.

As fiduciaries they could not escape this change of position. They could not submit to double taxation without subjecting themselves to a claim for surcharge in the amount of the second tax paid.

We submit that there is nothing in this situation which estops the executors in any court to assert that their decedent was domiciled in a State, the highest court of which has held him to have been a resident of that State at the time of his death.

If Dr. Dorrance was domiciled in Pennsylvania at the time of his death, the New Jersey authorities do not have

jurisdiction over his intangible personal property for the purposes of inheritance taxation. It follows that every step which they have taken in assessing that property for taxation is void. They cannot acquire jurisdiction by consent and, *a fortiori*, they cannot acquire it by estoppel. This proposition is fully established by many decisions of the courts of New Jersey.

In **Dixon v. Russell**, 78 N. J. L. 296 (1909) a case involving the assessment of inheritance tax, Judge Minturn speaking for the Supreme Court of New Jersey said at page 299:

> ". . . The jurisdiction of the surrogate, however, to assess the tax must be established by more than a mere estoppel *in pais*, arising as is claimed by the learned attorney-general from the fact that the prosecutor *pro forma* requested that the assessment be levied as the basis for invoking this writ, because manifestly this statutory proceeding does not establish a tribunal of which it can be said that consent can confer jurisdiction. That principle can be invoked only where the tribunal whose jurisdiction is in question has general power to hear the controversy, and is not applicable where the jurisdiction or power is not authorized by law, or conferred upon it by the constitution. 11 Cyc. 673 and cases cited; Cooley Const. Lim. 398."

There can be no doubt that this is settled law in New Jersey:

In re Chadwick's Will, 80 N. J. Eq. 168 (1920); **Kaufman v. Smathers**, 111 N. J. L. 52 (1933); **Van Ommen v. Hogeman**, 100 N. J. L. 224 (1924); **State v Baker**, 102 N. J. L. 349 (1926); **Lazorchak v. Demarest**, 108 N. J. L. 198 (1931); **Trustees of School District No. 28 v. Eliza Stocker**, 42 N. J. L. 115 (1879); **Collins v. Keller**, 57 N. J. L. 429, Atl. 753 (1896).

Mrs. Hill is not seeking to break her father's will nor are the executors engaged in such an undertaking. They are seeking to avoid the imposition of an unconstitutional tax. There is no case which we have been able to find anywhere which holds that a legatee must submit to an illegal tax merely because the testator misapprehended the place of his domicile, and because after his death his executors undertook to sustain the testator's mistaken belief.

The inapplicability of appellees' contention that the executors are estopped in this proceeding because of the probate of decedent's will is made clear by the case of **In re Mesa's Estate** already discussed in reply to the contention that the decree of probate is res judicata. See page 81.

The situation in this case is not unlike that which has arisen from time to time in patent cases, when it is claimed that a litigant had taken inconsistent positions.

In **Haughey v. Lee**, 151 U. S. 282 (1894), Mr. Justice Shiras said, at page 285:

> "... Whether or not there is any inconsistency in trying, at one time, to get a patent for a supposed invention, and in afterwards alleging, as against a rival successful in obtaining a patent, that there is no novelty in the invention, it certainly cannot be said to constitute an estoppel...."

The court continued:

> "... Besides, the defence of want of patentable invention in a patent operates not merely to exonerate the defendant, but to relieve the public from an asserted monopoly, and the court cannot be prevented from so declaring by the fact that the defendant had ineffectually sought to secure the monopoly for himself."

Haughey v. Lee was expressly reaffirmed by the United States Supreme Court in **Paramount Publix Corporation v. American Tri-Ergon Corporation**, 294 U. S. 464 (1935).

Whether one state or another is entitled to transfer inheritance tax, like a question of right to a patent, is not a mere private controversy. The states have rights. Two of them cannot collect the tax on the same property. Which of them is really entitled to the tax is a matter which cannot be determined by estoppels born of the conduct of executors. It is a substantive question of law and of fact which the executors are duty bound to have decided, however inconsistent their positions may have been at different times.

In **Grubb v. Public Utilities Commission**, 281 U. S. 470 (1930) at p. 475, Mr. Justice Van Devanter said:

> "* * * That the state court had jurisdiction of the parties is plain and not questioned But the appellant does question that it had jurisdiction of the subject matter—and this although at the outset he treated that jurisdiction as subsisting and invoked its exercise. Of course, he is entitled to raise this question notwithstanding his prior inconsistent attitude, for **jurisdiction of the subject matter must arise by law and not by mere consent** . . . "

This aptly covers the present situation.

VIII.

APPELLANTS WERE NOT GUILTY OF LACHES.

In the court below, appellees' counsel asserted, dogmatically, that appellants had been guilty of laches, "and for this reason alone, the motion for interlocutory injunction should be denied".

Not a case was cited to sustain this contention.

Not only are there no cases to sustain the appellees' pronouncement; there are likewise no facts.

Clearly the present actions could not be brought before the State's administrative officer took or threatened to take the first step looking towards the collection of a tax from the estate.

The assessment was made by the State Tax Commissioner on October 10, 1932.

A bill in equity cannot be filed until the administrative procedure has been completed. See ante, page 43.

Until appellees' brief in the court below was filed, the Attorney General of New Jersey was of the opinion that the Ordinary's review of the Tax Commissioner's action was "purely administrative, and not judicial". See page 57.

If the Attorney General of New Jersey was laboring under this impression until April, 1935, the appellants cannot be convicted of laches at his behest, for having entertained the same view.

The Ordinary's decision was rendered on May 11, 1934, —10½ months prior to the filing of the bills of complaint in these cases.

Every argument advanced by the Attorney General of New Jersey to demonstrate in the **Nevin Case**, that the Ordinary's review is "purely administrative and not judicial", applies with even greater force to sustain our position that the review of the Ordinary's action by the Supreme Court of New Jersey is also administrative.

The Supreme Court of New Jersey dismissed the writ of certiorari on February 11, 1935.

The bills were filed less than 2 months later, and more than 10 months prior to the expiration of the period allowed to the executors by law, for taking an appeal to the New Jersey Court of Errors and Appeals.

In **Hansen v. Slick**, 216 Fed. 164 (1914) at p. 172, Judge Orr, of the Western District of Pennsylvania, said:

> "Laches has been defined to be such neglect or omission to assert a right as, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, operates as a bar."

In **London & San Francisco Bank v. Dexter Horton & Co.**, 126 Fed. 593 (C. C. A. 9th, 1903, certiorari denied, 194 U. S. 631) Judge Morrow said, at p. 601:

> "One principle pervades all cases involving the defense of laches, however, and that is, that not only must there be a seemingly unnecessary delay on the part of the plaintiff in bringing or prosecuting his action, but that, by reason of some change in the condition or relations of the property or parties occurring during the period of delay, it would be inequitable to permit the claim of the plaintiff to be enforced."

See also **McIntire v. Pryor**, 173 U. S. 38 (1899); **U. S. Casualty Co. v. Charleston, S. C., Mining & Mfg Co.**, 183 Fed. 238 (1910), 247; **Hanchett v. Blair**, 100 Fed. 817 (C. C. A. 9th, 1900), 824.

In the present case, the appellees have certainly not been prejudiced by any delay which there may have been in bringing these suits.

If appellees are not entitled to collect inheritance tax from the Dorrance estate, no amount of delay can prejudice them.

If they are entitled to the tax, the estate will be called upon to pay interest at the rate of not less than 6 per cent. per annum, which will more than compensate for the delay.

Thus, even had there been unwarrantable delay in instituting this action,—which we deny,—it did not prejudice the appellees, and affords no foundation for a charge of laches.

IX.

APPELLANT MRS. HILL'S RIGHT TO SUE.

It is doubtful whether any case just like this has ever arisen, as far as concerns the right of the appellant, Mrs. Hill, as legatee, to sue on her own behalf.

In any event, we have been unable to find any cases which rule the question here presented.

The executors of Dr. Dorrance have asked to have the probate of his will and their appointment revoked on the ground that the decedent was domiciled in Pennsylvania.

Their petition for that purpose is now pending before the Surrogate of Burlington County. Should it be granted, their appointment would be void *ab initio*. Necessarily their status in any pending litigation would be subject to attack by the adverse parties. And, as proceedings in New Jersey, attacking inheritance tax assessments made by the State Tax Commissioner are statutory and must be taken within the times prescribed by statute, the avoidance of the executors' appointment, might most seriously imperil Mrs. Hill's rights.

But there is an even more serious situation confronting Mrs. Hill.

Not only have the executors formally questioned their own authority, but the appellee Martin, State Tax Com-

missioner of New Jersey, has filed a petition in the Orphans Court of Burlington County, New Jersey, praying the court to remove the executors because of an alleged breach of duty in asking to have the probate and the granting of letters testamentary revoked.

The purpose of this proceeding is amazingly transparent. The State Tax Commissioner has asked the court to substitute for the present executors, the State Treasurer of New Jersey.

Obviously were the State Treasurer to become the executor of the will of Dr. Dorrance, all proceedings challenging the validity of the New Jersey inheritance tax assessment would promptly come to an end. At that point, the only possible recourse of Mrs. Hill would be to institute proceedings in her own name.

But independent action deferred until that date might well be too late. It might then be impossible for Mrs. Hill to take proceedings necessary for the protection of her own interests.

The Orphans Court of Burlington County has not acted on the petition of the State Tax Commissioner. The petition ought to have been dismissed promptly, but although it was filed on May 12, 1933, it is still threateningly menacing the rights of the legatees under Dr. Dorrance's will.

Under these circumstances, we submit that Mrs. Hill has a right in her own name to seek to prevent her property being taken without due process of law.

The bill amply sets forth the loss which Mrs. Hill will suffer if the New Jersey tax assessment is sustained. There is a specific assessment against her life interest in the amount of $1,566,925.01. In addition, for years to come,

Mrs. Hill's annual income will be substantially reduced if the claim of the appellees to inheritance tax should be sustained. She expressly alleges that her loss will exceed $3,000,—the jurisdictional amount.

X.

CONCLUSION.

For the reasons stated in this brief, we believe that the decrees of the court below should be reversed.

Respectfully submitted,

WM. A. SCHNADER,
JOHN MILTON,
Attorneys for Appellants.

APPENDIX A.

I. PARTS OF NEW JERSEY TRANSFER INHERITANCE TAX ACT.

Chapter 228, Laws of 1909, as amended: by Chapter 226, Laws of 1912; Chapter 57, Laws of 1914; Chapter 151, Laws of 1914; Chapter 213, Laws of 1916; Chapter 283, Laws of 1918; Chapter 174, Laws of 1922; Chapter 294, Laws of 1926; Chapter 228, Laws of 1927; Chapter 144, Laws of 1929; Chapter 303, Laws of 1931.

An Act to tax the transfer of property, of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars ($500) or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided, in the following cases:

First. When the transfer is by will or by intestate laws of this State from any person dying seized or possessed of the property while a resident of the State.

Second. When the transfer is by will or intestate laws of real property within this State or of goods, wares and

merchandise within this State, and the decedent was a nonresident of the State at the time of his death.

Third. When the transfer is of property made by a resident, or is of real property within this State, or of goods, wares and merchandise within this State, made by a nonresident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within two years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall in the absence of proof to the contrary, be deemed to have been made in contemplation of death within the meaning of this section.

Fourth. When any person or corporation comes into the possession or enjoyment, by a transfer from a resident or from a nonresident decedent, when such nonresident decedent's property consists of real property within this State or of goods, wares and merchandise within this State, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by an instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act.

Fifth. Whenever property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons, the right of the

surviving joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this act in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased joint tenant or joint depositor and had been devised or bequeathed to the surviving joint tenant or joint tenants, person or persons, by such deceased joint tenant or joint depositor by will, excepting therefrom such part thereof as may be proved to the satisfaction of the State Tax Commissioner by the surviving joint tenant or joint tenants, person or persons, to have originally belonged to him or them and never to have belonged to the decedent; *provided, however,* that in case of a nonresident decedent this paragraph shall apply only to real property within this State or goods, wares and merchandise within this State.

All taxes imposed by this act shall be at the respective rates hereinafter specified upon the clear market value of such property to be paid to the State Tax Commissioner and deposited with the Treasurer of the State, when and as collected, for the use of said State, and all administrators, executors, trustees, grantees, donees or vendees, shall be personally liable for any and all such taxes until the same shall have been paid as hereinafter directed, for which an action of debt shall lie in the name of the State of New Jersey. In determining the clear market value of such property the following deductions and no others shall be allowed: Debts of the decedent owing at the date of death; *provided, however,* that in the case of a resident decedent there shall not be allowed a debt of said resident decedent owing for or secured by property outside of this State except when the

property for which the debt is owing or for which it is secured is subject to the tax imposed by this act, or except when the foreign debt exceeds the value of the property securing it or for which it was contracted, when the excess may be deducted, a reasonable sum for funeral expenses and last illness, such proportion of the State, county and municipal taxes for the current fiscal year upon the property as the elapsed portion of the said year bears to full calendar year, the ordinary expenses of administration, including the ordinary fees allowed executors and administrators and the ordinary fees of their attorneys, and transfer taxes paid or payable to other States or Territories or the District of Columbia or foreign governments on any property the transfer of which is taxable hereunder. *Provided, further, however,* the amount due or paid the government of the United States as a Federal estate tax shall not be considered as an expense of administration and shall not be allowed as a deduction.

(Here follow exemptions and rates.)

2. When any person shall bequeath or devise, convey, sell, grant or give any property or interest therein, or income therefrom, to any person or corporation for life or for a term of years, and vested interest in the remainder or corpus of said property to any person, or to any body politic or corporation, the whole of said property so transferred as aforesaid, shall be appraised immediately at its clear market value; and the value of said life estate or estate for a term of years shall be fixed in the manner hereinafter provided by section fourteen of this act; and the value of the remainder in said property so limited shall be ascertained by deducting the value of the said life estate or estate

for a term of years from the appraised market value of the property so limited; and the tax on the said estate or estates, remainder or remainders, interest or interests, shall be immediately due and payable and remain a lien upon the entire property so limited until paid.

3. Where an instrument creates an executory devise, or an estate in expectancy of any kind or character which is contingent or defeasible, the property transferred in accordance with such executory devise, or the property in which such contingent or defeasible interest is created by any such instrument, shall be appraised immediately at its clear market value, and after deducting from such appraisement the value of the life estate, or estate for a term of years, created by such instrument, the tax on such life estate, or estate for a term of years, if taxable under this act, shall be immediately levied and assessed, but the tax on the balance of said appraised value of such estate shall not be levied or assessed until the person or corporation entitled to said property comes into the beneficial enjoyment, seizin or possession thereof, and if taxable shall then be taxed. Where an instrument creates a power of appointment, the life estate, or estate for a term of years, created and transferred by such instrument, if taxable, shall be immediately appraised and taxed at its clear market value, but the appraisal and taxation of the interest or interests in remainder to be disposed of by the donee of power shall be suspended until the exercise of the power of appointment, and shall then be taxed, if taxable, at the clear market value of such property, which value of such property shall be determined as of the date of the death of the creator of the power.

A tax on an estate for life, or on an estate for a term of years, levied and assessed as directed in this section,

shall be due and payable as provided in section five of this act. All other taxes levied and assessed as directed in this section and all taxes on any property which may be transferred to the residuary legatees, heir or next of kin of any decedent, or which may revert to the heir of any decedent by reason of the failure of any contingency upon which any remainder may be limited, shall be due and payable within two months after the person entitled to the property shall come into the enjoyment, seizin or possession thereof, and if not paid shall thenceforth bear interest at the rate of ten per centum per annum until paid. No executor or trustee shall turn over any property of an estate mentioned in this section until the tax due thereon, and interest, if any, shall have been paid to the State Tax Commissioner, and any executor or trustee who shall turn over any property prior to the payment of the tax due thereon, together with interest, shall be personally liable for such tax and interest, which said liability may be enforced by an action of debt in the name of the State of New Jersey.

The State Tax Commissioner is hereby empowered and authorized to enter into an agreement with the executors or trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interest of the legatees or devisees were not ascertainable at the death of the testator, grantor, donor or vendor, and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said executors and trustees upon the payment of the taxes provided for in such composition; *provided, however,* that no such composition shall be conclusive in favor of said executors or trustees as against the interests of such cestuis que trust as may possess either pres-

ent rights of enjoyment or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee.

Provided, further, however, that if the executor, trustee or the person or persons, or body politic or corporate, beneficially interested in the property chargeable with the tax shall elect to defer the adjustment of the taxes until the said person or persons, or body politic or corporate, shall come into actual possession or enjoyment of the said property, such person or persons, or body politic or corporate, or the executor or trustee, shall execute a bond to the State of New Jersey, in a penalty of twice the amount of the tax imposed at the highest possible rate, with such surety or sureties as the State Tax Commissioner shall approve, conditioned for the payment of the said tax and interest thereon at such time or period as hereinabove provided, which bond shall be filed in the office of the State Tax Commissioner. Upon the filing and approval of said bond, the State Tax Commissioner shall be authorized to issue consents permitting the transfer of any and all property disclosed in the proceeding.

(Section 4 deals with tax on bequest to executors in excess of a reasonable compensation.)

5. All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor or vendor, unless in this act otherwise provided, and if not paid within one year from the date of the death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate of ten per centum per annum, to

be computed from the expiration of one year from the date of the death of such testator, intestate, grantor, donor or vendor, or until the same is paid, and in all cases where the executors, administrators, grantees, donees, vendees, or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond to the State of New Jersey in double the amount of the tax, conditioned to pay said tax, and any interest which may fall due thereon, said bond to be approved as to the form and sufficiency thereof by the State Tax Commissioner.

All taxes levied and assessed under this act shall be and remain a lien on all property owned by the decedent as of the date of death until paid or secured by bond, as provided for in the several provisions of this act.

6. The penalty of ten per centum per annum imposed by section five hereof for the nonpayment of said tax shall not be charged where in cases by reason of claims made upon the estate necessary litigation or other unavoidable cause of delay the estate of any decedent, or a part thereof, cannot be settled at the end of a year from the death of the decedent, and in such cases only six per centum per annum shall be charged upon the said tax from the expiration of such year until the cause of such delay is removed.

(Section 7 deals with deduction of tax before delivering bequests to legatees.

Section 8 deals with the executors' power to sell property to meet the tax.)

9. Any sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax due under this act, shall be paid by him, within thirty days

thereafter, to the State Tax Commissioner, and the person so paying shall be entitled to receive a receipt signed by the Treasurer of this State and countersigned by the State Tax Commissioner thereof, for such payment, which receipt shall be a proper voucher in the settlement of the account of any such executor, administrator or trustee.

Whenever the tax and interest chargeable has been paid in full or secured by bond, as is provided for in the several provisions of this act, or whenever any estate is determined by the State Tax Commissioner to be exempt from the payment of any inheritance tax to the State of New Jersey, there shall be issued to the executor, administrator or other proper representati[illegible] of the estate, a statement of the fact in such form as may be adopted by the State Tax Commissioner, which statement shall include a concise but definite description of the real property disclosed in the proceeding and shall be signed by the State Tax Commissioner. Such statement may also be recorded in the clerk's office of the county in which said real property is situated, in the book which shall be kept by the clerk for such purpose, labeled "Inheritance Tax," for which recording and indexing the said clerk shall receive a fee at the same rates as those charged for recording deeds, mortgages, bills of sale, chattel mortgages and all other documents.

10. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any devisee or beneficiary other than the corporations, institutions and organizations specifically exempted under the provisions of this act from the tax imposed hereby, it shall be the duty of the heirs, devisees, executors, administrators or trustees of such decedent to

give information thereof in writing to the State Tax Commissioner within six months after they obtain title thereto or undertake the execution of their respective duties, or, if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

(Section 11 relates to refunds in case of debts proven after the payment of the tax.)

12. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of a decedent, or standing in the joint names of such a decedent and one or more persons, or in trust for a decedent, liable to any such tax, the tax shall be paid to the State Tax Commissioner on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control, securities, deposits or other assets belonging to or standing in the name of a decedent who was a resident, or belonging to or standing in the joint names of such a resident decedent and one or more persons, including the shares of the capital stock of, or other interests in, safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the State Tax Commissioner at least ten days prior to said delivery or transfer; nor shall any such deposit company, trust company, corporation, bank or other institution, per-

son or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a resident decedent, or belonging to or standing in the joint names of a resident decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, shares of stock, or other assets, including the shares of capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer under the provisions of this act, unless the State Tax Commissioner consents thereto in writing. And it shall be lawful for the said State Tax Commissioner, either personally or by representative, to examine said securities, deposits or assets of a resident decedent, at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits, shares of stock, or other assets, including the shares of capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars; which liability for such tax and interest, or the penalty above described, or both, shall be enforced in an action of debt in the name of the State of

New Jersey, and the same, when recovered, shall be paid into the treasury of the State of New Jersey for the use of the State; *provided*, there shall be no liability for the payment of such tax and interest, or for such penalty of one thousand dollars in any case where such safe deposit company, trust company, corporation, bank or other institution, person or persons shall make delivery of securities, deposits, shares of stock or other assets, including the shares of capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, belonging to or standing in the names of two or more persons, without knowledge or reasonable ground to believe, that one of the persons to whom such securities, deposits or other assets belong or in whose name they stand is dead.

No corporation of this State shall transfer any stock of said corporation standing in the name of or belonging to a decedent, resident or nonresident, or in the joint names of a decedent and one or more persons, or in trust for a decedent, unless notice of the time of such intended transfer be served upon the State Tax Commissioner at least ten days prior to such transfer, nor until said Commissioner shall consent thereto in writing. Any corporation making such a transfer without first obtaining the consent of the State Tax Commissioner as aforesaid shall be liable for the amount of any tax which may thereafter be assessed on account of the transfer of such stock, together with the interest thereon, and in addition thereto a penalty of one thousand dollars, which liability for such tax and interest and the said penalty prescribed may be enforced in an action of debt in the name of the State of New Jersey, said penalty, when recovered, to be paid into the treasury of the State of New Jersey.

Nothing in this section contained shall apply to the assignment or transfer of any stock or obligations of corporations of this State or of national banking associations located in this State standing in the name of or belonging to a nonresident decedent who dies on or after July first, one thousand nine hundred and twenty-six, or standing in the joint names of such a nonresident decedent and one or more persons, or in trust for such a nonresident decedent, and nothing in this section contained shall require notice of any such intended transfer of any such stock or obligations to be served upon the State Tax Commissioner or shall require the consent in writing of said Commissioner thereto.

A tax shall be assessed on the transfer of property made subject to tax as aforesaid in this State of a nonresident decedent if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations taxable under this act, which tax shall bear the same ratio to the entire tax which the said estate would have been subject to under this act if such nonresident decedent had been a resident of this State, and all his property, real and personal, had been located within this State, as such taxable property within this State bears to the entire estate, wherever situated; *provided,* that nothing in this clause contained shall apply to any specific bequest or devise of any property in this State.

(Section 13 authorizes the State Tax Commissioner to make certain investigations.

Section 14 provides how the value of life estates, etc., shall be determined.)

15. When any amount of said tax shall have been paid erroneously to the State Tax Commissioner, it shall be

lawful for the Comptroller of the Treasury on satisfactory proof rendered to State Tax Commissioner of such erroneous payments, and duly certified by him to the comptroller, to draw his warrant on the State Treasurer, in favor of the executor, administrator, person or persons who have paid any such tax in error, or who may be lawfully entitled to receive the same, for the amount of such tax so paid in error; *provided,* that all such applications for the repayment of such tax shall be made within two years from the date of such payment.

16. The register of the Prerogative Court and every surrogate of any county in this State shall, within ten days after the probate of any will, either foreign or domestic, or the filing of a copy of any foreign will, or the taking out of letters of administration, notify, in writing, the State Tax Commissioner of such probate or administration; and any surrogate or the register of the Prerogative Court failing to notify said Commissioner in writing of the probate of any will, or the filing of a copy of any foreign will, or the taking out of any letters of administration, shall be liable to a penalty of two hundred dollars, to be recovered in an action of debt in the name of the State of New Jersey.

17. The State Tax Commissioner, either personally or by his assistant or other employee, is hereby empowered to examine any and all papers, documents and files which now are or hereafter may be filed or lodged with the register of the Prerogative Court, or with the surrogate of any county or with any other official of this State or of any municipality thereof, or with any person or corporation, for the purpose of ascertaining what, if any, property is, or shall be, liable to the payment of the tax provided for by this act.

18. In order to fix the value of property of persons whose estates shall be liable to the payment of a tax under this act, whether the same be in the ownership of a resident or nonresident decedent, the State Tax Commissioner on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as and whenever occasion may require. Every such appraiser shall forthwith give notice, by mail, to such persons as the State Tax Commissioner shall direct, of the time and place when and where he will appraise such property. He shall at such time and place appraise the same at its fair market value, and for that purpose the said appraiser is authorized to issue subpœnas and to compel the attendance of witnesses, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make report thereof, and of such value, in writing to said State Tax Commissioner, together with such other facts in relation thereto as the said State Tax Commissioner may, by order, require, which report and other data required by said Commissioner shall be filed in the office of such Commissioner, and from said report the said State Tax Commissioner shall forthwith assess and fix the cash value of such estate and levy the tax to which the same is liable, and shall immediately give notice thereof, by mail, to all parties known by said State Tax Commissioner to be interested therein. Any person or corporation dissatisfied with said appraisement or assessment may appeal therefrom to the Ordinary of this State within sixty days after the making and filing of such assessment, on giving a bond, approved by the Ordinary of this State, conditioned to pay said tax so as aforesaid levied by the said State Tax Commissioner, together with interests and costs, if the said tax be affirmed by the Or-

dinary. Any person failing to attend before an appraiser after service of a subpœna, or refusing to give evidence concerning any estate, shall be liable to a penalty of two hundred dollars, to be recovered in an action of debt by the State Tax Commissioner.

(Section 19 provides a penalty for misconduct by appraisers.)

20. The Ordinary of this State shall have jurisdiction to hear and determine all questions in relation to any tax levied under the provisions of this act.

21. If it shall appear to the State Tax Commissioner that any tax which has accrued under this act has not been paid according to law said Commissioner shall report such fact, in writing, to the register of the Prerogative Court, and said register shall issue a citation citing the persons or corporations interested in the property liable to said tax to appear before the Ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid; the service of such citation and the subsequent proceedings had thereon shall conform to the practice prevailing in the Prerogative Court. Upon the making of any decree the register of the Prerogative Court shall, upon the request of the State Tax Commissioner, furnish one or more copies of said decree, and the same shall be docketed and filed by the clerk of the Supreme Court, or by the county clerk of any county in this State, upon the request of the State Tax Commissioner, and the same shall have the same effect as a lien by judgment, and execution shall issue thereon according to the rules and practice appertaining to other judgments docketed and filed with said respective clerks.

22. Whenever the State Tax Commissioner shall have reason to believe that any tax is due and unpaid under this act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, he shall notify the Attorney-General of this State, in writing, of such failure to pay such tax, and the said Attorney-General, when so notified, if he have probable cause to believe that a tax is due and unpaid, shall prosecute the proceeding before the Ordinary of this State, as provided for in section twenty-one of this act, and the State Treasurer shall, on the warrant of the Comptroller, and the certification of the State Tax Commissioner, pay all the expenses of said proceeding.

23. The State Tax Commissioner shall keep a record in his department of all returns made by appraisers, cash value of annuities, life estates and term of years, and the amount of all taxes assessed by him; in addition to the foregoing the said Commissioner may enter in said books all other information and data which he may deem desirable or proper. All returns made by appraisers and all data otherwise gathered by the State Tax Commissioner, shall be considered as privileged communications and the same shall not be exhibited for inspection to any person or persons other than the executor or the administrator or a beneficiary entitled under the terms of the last will and testament or the intestate laws to share in the estate, or the duly authorized attorney of said executor, administrator or beneficiary. Nothing in this section shall be construed as prohibiting the use of such returns made by appraisers and all data otherwise gathered by the Commissioner in legal proceedings, involving the assessment, collection or abatement of taxes provided for by the various inheritance tax statutes prevailing in this State.

(Section 24 provides for rewards to informants as to tax improperly withheld by persons liable for it.

Section 25 imposes a penalty for false statements.)

26. The words "estate" and "property," wherever used in this act, except where the subject or context is repugnant to such construction, shall be construed to mean the interest of the testator, intestate, grantor, bargainor or vendor, passing or transferred to the individual or specific legatee, devisee, heir, next of kin, grantee, donee or vendee, not exempt under the provisions of this act, whether such property be situated within or without this State. The word "transfer," as used in this act, shall be taken to include the passing of property, or any interest therein, in possession or enjoyment, present or future, by distribution by statute, descent, devise, bequest, grant, deed, bargain, sale or gift.

(Section 27 is a severability clause.

Section 28 is a repealer.).

II. ACT OF JULY 11, 1934.

Chapter 250, Laws of 1934.

AN ACT appropriating ten million dollars ($10,000,000.00) for emergency relief purposes from moneys derived from transfer inheritance taxes on estates now in litigation, where the question of the domicile of the decedent is involved.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The sum of ten million dollars ($10,000,000.00) is hereby appropriated for emergency relief purposes from

moneys derived from transfer inheritance taxes on estates now in litigation, where the question of the domicile of the decedent is involved; said sum to be paid out of the treasury as other emergency relief moneys are by statute directed to be paid; any law heretofore passed to the contrary notwithstanding.

2. This act shall take effect immediately.

III. SECTION 11 OF THE NEW JERSEY CERTIORARI ACT OF 1903, AS AMENDED BY THE ACT OF APRIL 12, 1907, P. L. 95.

In all cases of writs of certiorari now pending or hereafter brought to remove any tax or assessment, or other order or proceeding touching any local or public improvement, or to review the proceedings of any special statutory tribunal, or to review the suspension, dismissal, retirement or reduction in rank of any person holding an office or position, state, county or municipal, from which he is removable only for cause and after trial, the courts shall determine disputed questions of fact, as well as of law, and inquire into the facts by depositions taken on notice, or in such other manner as is according to the practice of the court; provided, either party may use the testimony taken before the tribunal, board or officer whose action is being reviewed which testimony shall be considered by the court the same as if it had been taken by deposition on notice and either party may take additional testimony. The court may reverse or affirm, in whole or in part, such tax or assessment or other order or proceeding, finding or determination, suspension, dismissal, retirement or reduction in rank reviewed.

APPENDIX B.

EXCERPT FROM PAGE 24 OF BRIEF OF ATTORNEY GENERAL WILENTZ OF NEW JERSEY, IN EDWIN C. NEVIN, ET AL. v. J. H. THAYER MARTIN, ET AL., DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY, EQUITY NO. 4805 (NOW PENDING).

"Process is not immediately available to any of the defendants for the forcible collection of the tax against the plaintiffs or any of their property. Such collection may be enforced only by a suit at law in the name of the State of New Jersey under Section 1, subsection fifth of the tax statute. (Chapter 228, Laws of 1909, as amended), or by a statutory proceeding in the Prerogative Court on an order to show cause why the tax should not be paid under Section 21 of the aforementioned act. In either event, of course, the taxpayer may interpose any defense which he might think fit, including his non-liability to the tax in question.

"*In re Vineland Historical, etc., Society*, 66 N. J. Eq. 291, 56 Atl. 1039; aff'd, 67 N. J. Eq. 730, 63 Atl. 119."

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935.

No. 193

ELINOR DORRANCE HILL,

Appellant,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

DAVID T. WILENTZ,
Attorney General of New Jersey,
Counsel for Appellees.

DUANE E. MINARD,
Of Counsel.

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UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY.

In Equity. No. 5092

ELINOR DORRANCE HILL,

Plaintiff,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY; WILLIAM D. KELLY, STATE SUPERVISOR, INHERITANCE TAX BUREAU, OF THE STATE OF NEW JERSEY; FRANK J. MURRAY, COMPTROLLER OF THE STATE OF NEW JERSEY; WILLIAM H. ALBRIGHT, STATE TREASURER OF THE STATE OF NEW JERSEY; AND DAVID T. WILENTZ, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,

Defendants.

APPELLEES' STATEMENT IN ANSWER TO APPELLANT'S STATEMENT AS TO JURISDICTION.

Filed June 15, 1935.

(Dorrance Tax Case.)

(a)

The complaint prays:

"That an injunction issue, temporary until hearing and perpetual thereafter, enjoining and restraining the

> defendants, * * * from in any way collecting or attempting to collect inheritance tax from the executors of John T. Dorrance on the transfer of intangible personal property in the estate of said decedent, now being undertaken, from refusing to issue tax waivers to said executors covering the intangible personal property of said decedents estate and from refusing to release from escrow the personal property belonging to said decedent's estate now held in escrow subject to the control of the defendants or any of them." (Compl., pp. 19-20.)

The only action authorized by law is the procurement by defendants, or some of them, of a citation directing said executors to appear before the New Jersey Prerogative Court to show cause why the taxes in question should not be paid (N. J. P. L., 1931, Sec. 21, p. 764; summarized at p. 3 of appellant's statement as to jurisdiction.

All questions of fact and law raised in that court (Ans., pp. 49-70), including the exact amount of those taxes, were determined under authority of the statute (N. J. P. L. 1931, Sec. 18, p. 764; N. J. P. L. 1909, Sec. 20, p. 335; summarized at pages 2 and 3 of appellant's statement as to jurisdiction), by the final decree of the Prerogative Court entered May 11, 1934 (Complt., pgf. 42, p. 12; Ans., pgf. 42, pp. 12, 92), upon conclusions of that court filed February 7, 1934 (Ans., p. 71, officially reported in 115 N. J. E. 268) and May 10, 1934 (Ans., p. 87, officially re-reported in 116 N. J. E. 204).

That final decree was reviewed on certiorari, including a complete review of all questions of law and fact (Reasons, Ans., p. 96), and affirmed, by the Supreme Court of New Jersey by final judgment entered February 11, 1935 (Compl., pgf. 43, p. 12; Ans., pgf. 43, pp. 12, 106) upon a decision filed February 8, 1935 (Ans., p. 104, officially reported in 13 N. J. Miscl. Rep. 168).

Each of those courts constitutes part of the judicial department of the State government created and established by Article VI, Section I of the State Constitution, reading in part as follows:

> "The judicial power shall be vested in * * *; a prerogative court; a supreme court; * * *."

The final decree of the Prerogative Court and the final judgment of the Supreme Court are, respectively, judgments of a court of record having competent jurisdiction to review and determine all questions of fact and law in the premises; and are final judgments, respectively, binding and conclusive on the parties, and their privies, unless and until reversed or modified by a higher court, on review prosecuted in the manner provided by law.

If, in response to such citation, said executors fail to show cause why the taxes so determined should not be paid, the Prerogative Court may enter a decree directing judgment for the amount of such taxes, together with interest, to be docketed and filed by the clerk of the Supreme Court, or of any county court, upon which execution may be issued (N. J. P. L. 1931, Sec. 21, p. 764; appellant's statement, p. 3).

Appellees pleaded (and argued before the court on motion for interlocutory injunction) that:

(1) An injunction, if granted in accordance with the prayer of the complaint, would violate Section 265 of the Judicial Code (U. S. C., Title 28, Sec. 379) in that the same would stay a proceeding in a court of the State of New Jersey to collect the taxes in question, pursuant to said final decree in the New Jersey Prerogative Court, and said final judgment of the Supreme Court of the State of New Jersey (Ans., pgf. 74, p. 32).

(2) An interlocutory injunction, if granted in accordance with the prayer of the complaint by a statutory court of three judges, is not authorized by Section 266 of the Judicial Code (U. S. C., Title 28, Sec. 380), because this suit is not brought to suspend or restrain the enforcement, operation or execution of any statute of the State of New Jersey by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statute of such State (Ans., pgf. 75, p. 32).

The Supreme Court of the United States has jurisdiction, under Section 266, to entertain this appeal direct from said statutory court, convened under that section, if the statutory court had jurisdiction.

If, as the appellees contend and the statutory court held, the judgment of the New Jersey Supreme Court was that of a judicial tribunal, and the statutory court lacked jurisdiction to grant an interlocutory injunction because the suit was brought to stay a proceeding in a court of the State of New Jersey, in violation of Section 265, then the suit was not cognizable by the statutory court under Section 266 and this appeal does not lie direct to the Supreme Court of the United States, *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24.

The decree of the statutory court was correct. The same decree would necessarily have resulted if the application for interlocutory injunction had been heard and decided by a single judge, since the District Court, however constituted, was precluded by Section 265 from granting any injunction, either interlocutory or final, in accordance with the prayer of the complaint. The appeal should be dismissed, and the cause remanded to the District Court with instructions to dismiss the bill of complaint.

(b) and (c)

The remainder of appellants Statement (pages 4 to 11, inclusive) deals entirely with the merits of the case and is irrelevant under Rule 12. Appellees deny the statements of law and fact therein contained, but reserve until the proper time the argument thereof.

Motion to Dismiss the Appeal.

Comes now the appellees, by their solicitor, and moves that, for the reasons stated under heading (a) of the foregoing statement on their behalf, this appeal be dismissed, and the cause remanded to the District Court with instructions to dismiss the bill of complaint.

DAVID T. WILENTZ,
Attorney General of New Jersey,
Solicitor for Appellees.

DUANE E. MINARD,
Of Counsel.

June 12, 1935.

FILE COPY

FILED
JUL 1 1935
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CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1935.

No. 194

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M.D., ARTHUR C. DORRANCE, ET AL., ETC.,
Appellants,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

DAVID T. WILENTZ,
Attorney General of New Jersey,
Counsel for Appellees.

DUANE E. MINARD,
Of Counsel.

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UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity. No. 5091

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M.D., ARTHUR C. DORRANCE AND CAMDEN SAFE DEPOSIT AND TRUST COMPANY, EXECUTORS OF THE LAST WILL AND TESTAMENT OF JOHN T. DORRANCE, DECEASED,

Plaintiffs,

vs.

J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY; WILLIAM D. KELLY, STATE SUPERVISOR, INHERITANCE TAX BUREAU, OF THE STATE OF NEW JERSEY; FRANK J. MURRAY, COMPTROLLER OF THE STATE OF NEW JERSEY; WILLIAM H. ALBRIGHT, STATE TREASURER OF THE STATE OF NEW JERSEY; AND DAVID T. WILENTZ, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,

Defendants.

APPELLEES' STATEMENT IN ANSWER TO APPELLANTS' STATEMENT AS TO JURISDICTION.

(a)

The complaint prays:

> "That an injunction issue, temporary until hearing and perpetual thereafter, enjoining and restraining the defendants, • • • from in any way collecting

or attempting to collect inheritance tax from the plaintiffs on the transfer of decedent's intangible personal property in the estate of John T. Dorrance, deceased, now being undertaken, from refusing to issue tax waivers to the plaintiffs covering the intangible personal property of said decedent's estate, and from refusing to release from escrow the personal property belonging to said decedent's estate now held in escrow subject to the control of the defendants or any of them." (Compl., pp. 18-19.)

The only action authorized by law is the procurement by defendants, or some of them, of a citation directing plaintiffs to appear before the New Jersey Prerogative Court to show cause why the taxes in question should not be paid (N. J. P. L. 1931, Sec. 21, p. 764; summarized at p. 3 of appellants' statement as to jurisdiction).

All questions of fact and law raised in that court (Ans. pp. 49-70), including the exact amount of those taxes, were determined under authority of the statute (N. J. P. L. 1931, Sec. 18, p. 764; N. J. P. L. 1909, Sec. 20, p. 335; summarized at pages 2 and 3 of appellants' statement as to jurisdiction), by the final decree of the Prerogative Court entered May 11, 1934 (Complt. pgf. 35, p. 10; Ans. pgf. 35, pp. 12, 92), upon conclusions of that court filed February 7, 1934 (Ans. p. 71; officially reported in 115 N. J. E. 268) and May 10, 1934 (Ans. p. 87; officially reported in 116 N. J. E. 204).

The final decree was reviewed on certiorari, including a complete review of all questions of law and fact (Reasons, Ans. p. 96), and affirmed, by the Supreme Court of New Jersey by final judgment entered February 11, 1935 (Compl. pgf. 36, p. 11; Ans. pgf. 36, pp. 13, 106) upon a decision filed February 8, 1935 (Ans. p. 104; officially reported in 13 N. J. Miscl. Rep. 168).

Each of those courts constitute part of the judicial department of the state government created and established

by Article VI, Section I, of the state constitution, reading in part as follows:

> "The judicial power shall be vested in * * * a prerogative court; a supreme court; * * * ."

The final decree of the Prerogative Court and the final judgment of the Supreme Court are, respectively, judgments of a court of record having competent jurisdiction to review and determine all questions of fact and law in the premises; and are final judgments, respectively, binding and conclusive on the parties unless and until reversed or modified by a higher court, on review prosecuted in the manner provided by law.

If, in response to such citation, plaintiffs fail to show cause why the taxes so determined should not be paid, the Prerogative Court may enter a decree directing judgment for the amount of such taxes, together with interest, to be docketed and filed by the clerk of the Supreme Court, or of any county court, upon which execution may be issued (N. J. P. L. 1931, Sec. 21, p. 764; Appellants' statement pp. 3-4).

Appellees pleaded (and argued before the court on motion for interlocutory injunction) that:

(1) An injunction, if granted in accordance with the prayer of the complaint, would violate Section 265 of the judicial code (U. S. C. Title 28, Sec. 379) in that the same would stay a proceeding in a court of the State of New Jersey to collect the taxes in question, pursuant to said final decree in the New Jersey Prerogative Court, and said final judgment of the Supreme Court of the State of New Jersey (Ans. pgf. 69, p. 32).

(2) An interlocutory injunction, if granted in accordance with the prayer of the complaint, by a statutory court of three judges, is not authorized by Section 266 of the Judicial Code (U. S. C. Title 28, Sec. 380) because this suit

is not brought to suspend or restrain the enforcement, operation or execution of any statute of the State of New Jersey by restraining the action of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State (Ans. pgf. 70, p. 32).

The Supreme Court of the United States has jurisdiction, under Section 266, to entertain this appeal direct from said statutory court, convened under that section, if the statutory court had jurisdiction.

If, as the appellees contend and the statutory court held, the judgment of the New Jersey Supreme Court was that of a judicial tribunal, and the statutory court lacked jurisdiction to grant an interlocutory injunction because the suit was brought to stay a proceeding in a court of the State of New Jersey, in violation of Section 265, then the suit was not cognizable by the statutory court under Section 266 and this appeal does not lie direct to the Supreme Court of the United States, *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24.

The decree of the statutory court was correct. The same decree would necessarily have resulted if the application for interlocutory injunction had been heard and decided by a single judge, since the District Court, however constituted, was precluded by Section 265 from granting any injunction, either interlocutory or final, in accordance with the prayer of the complaint. The appeal should be dismissed, and the cause remanded to the District Court with instructions to dismiss the bill of complaint.

(b) and (c)

The remainder of Appellants' Statement (pages 4 to 10, inclusive) deals entirely with the merits of the case and is irrelevant under Rule 12. Appellees deny the statements

of law and fact therein contained, but reserve until the proper time the argument thereof.

Motion to Dismiss the Appeal.

Comes now the Appellees, by their solicitor, and moves that, for the reasons stated under heading (a) of the foregoing statement on their behalf, this appeal be dismissed, and the cause remanded to the District Court with instructions to dismiss the bill of complaint.

DAVID T. WILENTZ,
Attorney General of the State of New Jersey,
Solicitor for Appellees.

DUANA E. MINARD,
Of Counsel.

June 12, 1935.

FILE COPY

FILED
JUL 1 1935
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CLERK

Supreme Court of the United States

No. 193. October Term 1935.

ELINOR DORRANCE HILL,
Appellant,
vs.
J. H. THAYER MARTIN, *et als.*,
Appellees.
On Appeal.

APPELLEES' BRIEF ON THE QUESTION OF JURISDICTION.

DAVID T. WILENTZ,
Attorney General,
Solicitor for Appellees.

DUANE E. MINARD,
GEORGE S. HOBART,
Counsel.

July 12, 1935.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

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Supreme Court of the United States

No. 193. October Term 1935.

ELINOR DORRANCE HILL, *Appellant,* vs. J. H. THAYER MARTIN, *et als.*, *Appellees.*	*On Appeal.*

APPELLEES' BRIEF ON THE QUESTION OF JURISDICTION.

Statement.

This is a direct appeal, under Section 266 of the Judicial Code, from a decree entered June 4, 1935, in the District Court for the District of New Jersey, denying appellant's motion for interlocutory injunction.

Following Rule 12, paragraph 3, appellees included in, and filed with, their statement as to the jurisdiction of the court, a motion to dismiss.

Complying with Rule 7, paragraph 3, appellant has filed a brief in opposition to that motion.

Appellees respectfully submit this reply. It follows the order of points in, and page references herein are to, that brief.

ARGUMENT.

I.

Action to Collect the Tax.

(pp. 3-7.)

The only provision in the statute for an action of debt is contained in the following portion of section 1 of the act:

> "All taxes imposed by this act shall be at the respective rates hereinafter specified upon the clear market value of such property to be paid to the State Tax Commissioner and deposited with the Treasurer of the State, when and as collected, for the use of said State, and all administrators, executors, trustees, grantees, donees or vendees, shall be personally liable for any and all such taxes until the same shall have been paid as hereinafter directed, for which an action of debt shall lie in the name of of the State of New Jersey."

(*N. J. P. L. 1931, Ch. 303, p. 749, at pages 750-1; N. J. P. L. 1934, Ch. 244, p. 698, at page 700*). It does not apply to the collection of the tax out of the estate itself, or to the enforcement of a final decree of the Prerogative Court establishing the validity of the tax or the amount due, as in this case.

The assessment, and the amount of the tax, in question, having been sustained (on all questions of law as well as of fact) by the final decree of the Prerogative Court (which decree was affirmed by the state Supreme Court), the statutory procedure for collection is that described in sections 21 and 22 (*Appl. Br. pp. 3-4*).

Such a proceeding is not a new or distinct proceeding, or an independent action. It is an essential step in the assertion of the power of the Prerogative Court to issue proper process to enforce its decree. Such jurisdiction continues until the decree has been satisfied. This be-

comes plain from a brief consideration of the origin, nature and process of that court.

It was the ancient prerogative of the bishop of the diocese to administer the estates of decedents therein. This was done in the Prerogative Court of which the bishop (or "ordinary") was judge. *2 Blackstone's Com. 509-10; 3 Idem., 66.*

That court was transplanted in the Colony of New Jersey by Queen Anne's instructions (November 16, 1702) and commission (December 5, 1702) to Lord Cornbury, the first Royal Governor after the surrender of the proprietary government. *Leaming & Spicer's "Grants and Concessions" (Instructions) pp. 638-9, (Commission) pp. 650, 651, 652,* and continued down to the American Revolution, and was adopted by the State Constitution of July 2, 1776, which vested that jurisdiction in the governor as chancellor and ordinary. *Arts. VIII, XXII, 5 Thorpe's Am. Charters, pp. 2596, 2598. In Re Coursen's Will, 4 N. J. E. 408, 412, 415; In Re Hodnett, 65 N. J. E. 329, 337-8.*

When the powers of government were separated by the Constitution of 1844, the office and jurisdiction of the ordinary and judge of the Prerogative Court were vested in the chancellor, where they still remain. *Dickinson's Probate Court Practice (1884) pp. 2-5.*

From 1844 onward to and including the present time, the State Constitution has provided:

> "The judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require."
>
> *Art. VI, Sec. I, pgf. 1.*

"The chancellor shall be the ordinary or surrogate general, and judge of the prerogative court."

Art. VI, Sec. IV, pgf. 2.

5 Thorpe's Am. Charters, 2608, 2609.

The Constitution of 1776 provided "That the common law of England, as well as so much of the statute law, as have been heretofore practiced in this colony, shall still remain in force, until they shall be altered by a future law of the legislature; * * *" (*Art. XXII*). Like provision has been carried through to the present constitution (*Art. X*) *5 Thorpe's Am. Charters, pp. 2598, 2613.*

By the above inclusion of the Prerogative Court as part of the judicial system of the state, that tribunal became a judicial tribunal, as well as a constitutional court, which could not be altered or abolished. There was nothing to prevent the legislature from extending its jurisdiction to additional subjects, but the legislature could not deprive the decrees of that court of their quality of being conclusive. *Harris* v. *Vanderveer's Executor* (Court of Errors and Appeals), 21 N. J. Eq. 424, 427-8.

The jurisdiction of the Prerogative Court, both in England and in the Colony and State of New Jersey, including its appellate jurisdiction, is discussed in *Dickinson's Probate Court Practice, pp. 7-10, 11-12.*

Adhering to its common law forms and procedure, and regarding succession taxes as kindred to the succession of prosperity, the legislature of New Jersey, from the enactment of the first succession tax act in 1909 (*N. J. P. L. 1909, Ch. 228, sec. 18, p. 334*), has consistently provided the right of appeal from the appraisement or assessment, to the Ordinary, as the judge of the Prerogative Court, and has conferred upon him "jurisdiction to hear and determine all questions" (*ibid. p. 335*) in the same manner as he has jurisdiction to hear and determine all questions relating to other matters within his appellate

jurisdiction. The statute prescribed no practice or procedure, but left that to the established forms in that court, namely, (a) petition of appeal; (b) answer; (c) order of reference to a vice ordinary; (d) hearing; (e) findings of fact and conclusions of law; (f) final decree; and such other preliminary or intermediate proceedings as may be necessary (*Ans. pp. 49-95*).

In New Jersey, as in England, the Prerogative Court has always had the quality of a court of equity, and the rules of equity practice were followed in its procedure. *Bugbee* v. *Van Cleve*, 99 N. J. Eq. 825, 833.

Except for a few special writs (none of which are applicable here), courts following equity procedure were without power to enforce their decrees except by citation for contempt. *2 Daniell's Chy. Pl. & Pr. (Perkins Am. Ed.) 1054 et seq.* For that reason section 21 of the inheritance tax act provides for a citation to bring the parties before the Ordinary to show cause why such tax should not be paid in accordance with its decree. The common law procedure on such a citation was to punish for contempt. Declaratory of that procedure the legislature, in 1900, enacted a law respecting the Prerogative Court, and the power and authority of the Ordinary; section 7 of which reads as follows:

> "7. If any person shall neglect or refuse to obey any citation, or to perform any sentence or decree of the ordinary or judge of the prerogative court, it shall be lawful for such ordinary and such court to cause such person or persons, by process directed to any sheriff of any county of this state, to be taken and imprisoned until he shall obey the said citation, or perform the said sentence or decree; and every sheriff is hereby directed to cause all such process, to him at any time directed, to be duly executed, and to confine the person against whom such process shall be issued, as in execution, until he shall be delivered by due course of law; and if any sheriff shall neglect his duty therein, he shall be answerable

> to the party aggrieved in such manner as he would be answerable upon process of a like nature issuing out of the supreme court." (*N. J. P. L. 1900, Ch. 148, p. 347.*)

In the transfer inheritance tax act of 1909 (now sec. 21) the legislature directed that proceedings on such citation shall conform to the practice prevailing in the Prerogative Court, and added, that the decree of the court thereon shall, upon request of the State Tax Commissioner, be docketed and filed by the Clerk of the Supreme Court, or by the County Clerk of any county, with the effect of a judgment lien upon the property of the estate, and that execution be issued thereon, in accordance with the rules and practice appertaining to judgments of other courts docketed therein, and, particularly, with the practice of docketing in the Supreme Court clerk's office of decrees of the New Jersey Court of Chancery (*N. J. P. L. 1902, p. 524*).

Thenceforward, collection is pursued as prescribed for civil judgments, in "An Act respecting executions" (*N. J. Revision 1877, pp. 389, et seq.; 2 N. J. Comp. Stat. pp. 2243, et seq.*).

Since the only proceeding which the statute prescribes for enforcing the court's decree is that described in sections 21 and 22, the injunction (either preliminary or final) sought by appellant, if granted by the court, could, in effect, do nothing but enjoin the procurement of the citation as a process to enforce the parties to obey the final decree of the court. The jurisdiction of the court continues, and the matter is still a proceeding in that court until the decree is satisfied. *Ruggles* v. *Simonton,* 20 Fed. Cas. No. 12,120; *Am. Ass'n.* v. *Hurst,* 59 Fed. 1; *Leathe* v. *Thomas,* 97 Fed. 136; *Ke-Sun Oil Co.* v. *Hamilton,* 61 Fed. (2d) 215, 218.

Appellant labors under the mistaken impression that the statutory limit of one year allowed for appeal to the Court of Errors and Appeals constitutes a *minimum,* rather

than a maximum, limit. The argument amounts to the claim that that provision conferred a vested right to immunity from earlier action to enforce the decree of the Prerogative Court; that theory implies that during that appeal period appellees *cannot* take any action to enforce the court's final decree, and that meanwhile appellant *need* not obey that decree. If that is so, the extraordinary remedy by writ of injunction in the federal court is unnecessary, since there was nothing to enjoin.

Appellant is also mistaken in the argument that mere intention to appeal to the state court of last resort (not yet expressed by notice of appeal) affords immunity from the enforcement of the decree. It is encumbent upon her to make a selection of remedies between the state and federal courts. She has no right to go through the state courts as far as she chooses, then suddenly switch to the federal courts, and at the same time hold open a line of retreat through the state courts if she is disappointed in the federal court.

If the statements in the last paragraph on page 6 of the brief are true, an application for injunction in the federal court was unnecessary, since an equally effective stay was obtainable (as of right) on an appeal to the state court of last resort.

There was, therefore, a "proceeding" in a court of the State of New Jersey, within the meaning of Section 265 of the Judicial Code, which appellant sought to enjoin. In that respect the decree of the District Court was correct.

II.

The proceedings in the New Jersey Courts were judicial. (pp. 7-12.)

Except to state the fact that the decree of the Prerogative Court was final and conclusive, and binding upon the parties unless and until reversed by a higher court, nothing need be added to what has been said under Point I respecting the character of that court, particularly since the decree of the District Court was not rested upon the final decree of that Court, but upon the final judgment of the State Supreme Court.

It matters not whether the jurisdiction of a court is conferred by the constitution or by statute, the character and effect of the proceedings therein determines whether its function is administrative or judicial. *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24. Otherwise all the federal courts, save this court, would be administrative, since they are created, and their jurisdiction is defined, by statute.

Nor does it matter by what vehicle of pleading the case is brought before the court. Proceedings instituted by a motion are sufficient. *American Surety Co.* v. *Baldwin*, 287 U. S. 156, 165.

The New Jersey Supreme Court is a constitutional court, (*Const. Art. VI, sec. IV, pgf. 2, supra*), with the powers and prerogatives of the Court of King's Bench in England (*Const. Art. X, supra*). The power of that court to review on *certiorari* the final decree of the Prerogative Court was not conferred by statute; it was one of the inherent prerogatives of the court under the common law. *State* v. *Justices, etc. of Middlesex County*, 1 N. J. L. 283 (old paging 244); *Dufford* v. *Decue*, 31 N. J. L. 302, 305, 307; *Jersey City* v. *Lembeck*, 31 N. J. E. 255.

That inherent power of review on *certiorari* has, from the beginning, been exercised to review tax assessments generally, *Black's Law of Taxation, 4th ed. Sec. 279a, p. 394;* and extends to the review of inheritance taxes. *Black's Law of Taxation, 4th ed. Sec. 129h, p. 181; Roebling's Estate, 91 N. J. E. 72, 75.*

The provisions of Section 11 of the Certiorari Act, quoted at pages 8 and 9 of appellant's brief, are merely declaratory of the common law, and do not, and could not, diminish the inherent power of the court, under the New Jersey constitution (cases cited in the last two preceding paragraphs and) *Harris* v. *Vanderveer's Executor*, 21 N. J. E. 424, 427.

In *Royal Mfg. Co.* v. *City of Rahway*, 75 N. J. L. 416, and *Trenton & Mercer County Tr. Co.* v. *Mercer County Board of Taxation*, 92 N. J. L. 398, cited on page 9, and *Gibbs* v. *State Board*, 101 N. J. L. 371, cited on page 10, the Supreme Court reviewed assessments as made by boards of assessors, who were admittedly administrative bodies, and not the final decree or judgment of a court, yet in a like case subsequently decided (in 1926) the Court of Errors and Appeals held that the revisory power conferred upon the Supreme Court by Section 11 of the Certiorari Act "is not mandatory or obligatory," and sustained that court in setting aside the assessment and remanding the case back to the state tax board for further proceedings not inconsistent with its decision. *Kearny* v. *State Board*, 103 N. J. L. 26, 27.

The essential qualities of judicial tribunals, as defined in *City Bank Farmers Trust Co.* v. *Schnader, supra,* were present in both the Prerogative and the Supreme Courts. Section 20 of the inheritance tax act conferred upon the Prerogative Court jurisdiction "to hear and determine all questions in relation to any tax levied under the provisions of this act" (*N. J. P. L. 1909, p. 335*). The same power,

already inherent in the Supreme Court, is declared by Section 11 of the Certiorari Act (*Appl. Br. p. 9*). In both courts the proceedings were *inter partes* (*Ans. pp. 71, 87, 96, 104*); the court had power to decide, and did decide, all questions as to the validity, as well as to the amount, of the assessment; the final decree of one, and the final judgment of the other, were both final and conclusive judgments of courts of record of competent jurisdiction, binding upon the parties, unless and until reversed by a higher court.

It is true that the state was not a party *eo nominee* in either court, but the state was the real party in interest and was represented by a state officer in his official capacity, who is one of the defendants in the same representative and official capacity in this suit. If, as Appellants claim (p. 12), not the state, but only the State Tax Commissioner, had an interest in those proceedings or their results, why are the other state officers joined as defendants (or appellees here) in these suits? When collected, the tax goes to the state, and not to the individuals. (See section 1 of the inheritance tax act quoted at the beginning of this brief.)

> "The state is the principal and the action of her officers rightly may be imputed to her, even though a suit for injunction might be against them." *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 591.

III.

Res Judicata.

(pp. 12-14.)

The only "intention" to appeal to the Court of Errors and Appeals which New Jersey practice recognizes is a Notice of Appeal (*N. J. S. C. Rule 137*). No such notice of appeal has been served. A declaration of such intention in the complaint (pfg. 47) amounts to nothing.

It is claimed (p. 13) that the right to invoke the jurisdiction of the federal court cannot be barred by a plea of *res judicata,* unless the pleaded judgment is either that of the state court of last resort and the period for appeal or petition for certiorari to this court has expired, or is the judgment of a lower court in which the parties have acquiesced without resort to the appellate court. In support of that claim they cite *Eastern B. & L. Assn. of Syracuse* v. *Welling,* 103 Fed. 352, 355; *Grubb* v. *Public Utilities Commission,* 281 U. S. 470, and *American Surety Co.* v. *Baldwin,* 287 U. S. 156.

In the first case the plea of *res judicata* was rejected because the judgment of the state court pleaded therein had been removed on writ of error to the Supreme Court of the United States and was there pending and undecided at the time the plea was filed. In the present case no appeal has been taken from the judgment of the state court. The judgment of the New Jersey Supreme Court is final until reversed by a higher court. The fact that the time for appeal has not expired is of no consequence. So far, the parties have acquiesced in that judgment.

The second case holds squarely opposite to appellant's contention under this point. It sustained the plea of *res judicata* on a judgment of the state court in proceeding which was instituted after the suit in the federal court, in which the judgment was pleaded, was commenced, and

was carried to conclusion and the judgment entered before the District Court proceeding was concluded. There, as here, the only ground of federal jurisdiction alleged in the bill was that the suit arose under the Constitution of the United States and involved more than $3,000 (p. 473).

The court held that the state and federal courts have concurrent jurisdiction of suits arising under the Constitution and laws of the United States, except where otherwise expressly restricted by Congress; that the suit was of such a nature that it could proceed in both courts, in virtue of their concurrent jurisdiction, until there was a final judgment in one, when that judgment would become conclusive in the other as *res judicata* (p. 476).

It held that the state court's decision on questions of local law would be accepted as controlling in this court (p. 477). It held that the judgment of the state court was *res judicata* in the federal district court (p. 479).

The third case likewise holds squarely against appellant's contention. The reference to proceedings (p. 14 of Brief) taken in the state court "which ripened into a final judgment," taken from page 164 of the decision, refers back to the obligations of the bond of the Surety Company (recited at p. 160 of decision) which provided that if the judgment was appealed and affirmed and it did not make payment under the bond within 30 days from the filing of the remittitur from the Supreme Court "judgment may be entered on motion of the respondents in their favor against the undersigned surety." Under this language of the bond judgment was entered without notice. It was the obligation of the bond which "ripened into" a final judgment. In that case this court said:

> (p. 165) "But an adequate state remedy was available; and having invoked that and pursued it to final judgment, the Surety Company cannot escape the effect of the adjudication there.
>
> . . . . . .

(p. 167) "Since the constitutional issue as to jurisdiction might have been presented to the state Supreme Court and reviewed here, the decision is a bar to the present suit insofar as it seeks to enjoin the enforcement of the judgment for want of jurisdiction."

(p. 169) "Having invoked the state procedure which afforded the opportunity of raising the issue of lack of notice (due process of law), the Surety Company cannot utilize the same issue as a basis for relief in the federal court."

An attempt is made (p. 14) to distinguish this case from the companion case of *Dorrance, et als.* v. *Martin, et als.* (No. 194) on the erroneous theory that this plaintiff is not bound by the action of the executors who conducted the litigations in the state courts. She cannot lift herself by her boot-straps. Her only interest in the estate is as a legatee under the will, which was probated in New Jersey and the appellants in case No. 194 were appointed executors and trustees by that will and qualified under it. All their action so far has been representative of all parties interested in the estate. This appellant has not complained about their conduct of the estate or of the litigation in the New Jersey courts. She cannot possibly escape responsibility for what they did for her benefit as her representatives, she being of age at the time of the probate of the will (*Ans. p. 38*), and having ever since accepted, without objection, her monthly allowance of $10,000.00 under that will (Ex. 6 attached to answering affidavit of William D. Kelly, pp. 40-44, 49-55) as her share of the income of the estate.

IV.

Jurisdiction under Section 266 of the Judicial Code.

(p. 15)

It is precisely upon the difference between this case and that of *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24, mentioned by appellant under this point, that we rest our view that section 266 does not apply to this case. Admittedly, the federal court intervened, in the Schnader case, at the end of the administrative appraisement of the property involved; in this case the jurisdiction of the federal court was not invoked until two judicial tribunals had reviewed, entered final judgments on the review of, the appraisement.

Under Point I of this brief it is shown that what appellant sought to enjoin in the District Court was nothing more nor less than the process of entering judgment and issuing execution upon a final decree of the Prerogative Court. Appellant does not seek to enjoin the carrying out of a statute which requires her to do something, or forbids her to do something, under a penalty, nor does she seek to restrain the enforcement of an order or regulation of an administrative board or body. She seeks to enjoin appellees from enforcing a final decree of a judicial tribunal. If this view is correct, it was not a case for three judges. The result may be that the statutory court had no jurisdiction to make the decree appealed from, but candor requires the presentation of this view to the court. However, if that is so, then it follows that an injunction (either interlocutory or final) cannot be issued in any federal court in this case, and the complaint should be dismissed.

V.

The Pennsylvania Suit.

(pp. 16-17.)

Under this point appellant argues that the judgment of the Pennsylvania Supreme Court was binding on all the parties to this suit, whether they were parties to that suit or not, because the judgment in the P nnsylvania case was entered in a proceeding *in rem*. It is true the proceeding was *in rem*, but the very reason why the Prerogative Court held that the Pennsylvania court had no jurisdiction was because the *res* was not within the jurisdiction of the Pennsylvania court. Not a dollar, or an article, of the property of the estate was located in Pennsylvania and obviously it could not exercise jurisdiction *in rem* of property located beyond its territorial limits. The fact was that not only was the *res* located in New Jersey, but that it was, and still is, being administered in a proceeding *in rem* in the Orphans' Court of Burlington County, New Jersey (*Ans. p. 74*).

The attempt, in the fourth paragraph on page 16 to implicate the State of New Jersey into some form of participation in the Pennsylvania litigation is obviously futile.

VI.

Conclusion.

Appellant (through her representatives, the executors) having voluntarily submitted to the New Jersey Prerogative Court (*Petition of Appeal, Ans. pp. 49-59*) and to the Supreme Court (*Reasons, Ans. pp. 96-103*) all questions of law and fact alleged in the bill of complaint in this suit and obtained a final adjudication of those questions in each of those courts, and having the opportunity as a matter of right (with a stay against the collection of the tax) to appeal from the final judgment of the state Su-

preme Court to the New Jersey Court of Errors and Appeals, and thereafter (in case of an adverse decision) to invoke a review in this court (*American Surety Co.* v. *Baldwin*, 287 U. S. 166, 167), no substantial federal question is presented on this appeal.

For the foregoing reasons this appeal should be dismissed.

Respectfully submitted,

DAVID T. WILENTZ,
Attorney General.
Solicitor for Appellees.

DUANE E. MINARD,
GEORGE S. HOBART,
Counsel.

Dated: July 12, 1935.

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Supreme Court of the United States

No. 194. October Term 1935.

ETHEL M. DORRANCE, *et als.*,
Appellants,
vs.
J. H. THAYER MARTIN, *et als.*,
Appellees.
} *On Appeal.*

APPELLEES' BRIEF ON THE QUESTION OF JURISDICTION.

DAVID T. WILENTZ,
Attorney General,
Solicitor for Appellees.

DUANE E. MINARD,
GEORGE S. HOBART,
Counsel.

July 12, 1935.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

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Appellants,

vs.

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Appellees.

On Appeal.

APPELLEES' BRIEF ON THE QUESTION OF JURISDICTION.

Statement.

This is a direct appeal, under Section 266 of the Judicial Code, from a decree entered June 4, 1935, in the District Court for the District of New Jersey, denying appellants' motion for interlocutory injunction.

Following Rule 12, paragraph 3, appellees included in, and filed with, their statement as to the jurisdiction of the court, a motion to dismiss.

Complying with Rule 7, paragraph 3, appellants have filed a brief in opposition to that motion.

Appellees respectfully submit this reply. It follows the order of points in, and page references herein are to, that brief.

ARGUMENT.

I.

Action to Collect the Tax.

(pp. 3-7.)

The only provision in the statute for an action of debt is contained in the following portion of section 1 of the act:

> "All taxes imposed by this act shall be at the respective rates hereinafter specified upon the clear market value of such property to be paid to the State Tax Commissioner and deposited with the Treasurer of the State, when and as collected, for the use of said State, and all administrators, executors, trustees, grantees, donees or vendees, shall be personally liable for any and all such taxes until the same shall have been paid as hereinafter directed, for which an action of debt shall lie in the name of of the State of New Jersey."

(*N. J. P. L. 1931, Ch. 303, p. 749, at pages 750-1; N. J. P. L. 1934, Ch. 244, p. 698, at page 700*). It does not apply to the collection of the tax out of the estate itself, or to the enforcement of a final decree of the Prerogative Court establishing the validity of the tax or the amount due, as in this case.

The assessment, and the amount of the tax, in question, having been sustained (on all questions of law as well as of fact) by the final decree of the Prerogative Court (which decree was affirmed by the state Supreme Court), the statutory procedure for collection is that described in sections 21 and 22 (*Appl. Br. pp. 3-4*).

Such a proceeding is not a new or distinct proceeding, or an independent action. It is an essential step in the assertion of the power of the Prerogative Court to issue proper process to enforce its decree. Such jurisdiction continues until the decree has been satisfied. This be-

comes plain from a brief consideration of the origin, nature and process of that court.

It was the ancient prerogative of the bishop of the diocese to administer the estates of decedents therein. This was done in the Prerogative Court of which the bishop (or "ordinary") was judge. *2 Blackstone's Com. 509-10; 3 Idem., 66.*

That court was transplanted in the Colony of New Jersey by Queen Anne's instructions (November 16, 1702) and commission (December 5, 1702) to Lord Cornbury, the first Royal Governor after the surrender of the proprietary government, *Leaming & Spicer's "Grants and Concessions" (Instructions) pp. 638-9, (Commission) pp. 650, 651, 652,* and continued down to the American Revolution, and was adopted by the State Constitution of July 2, 1776, which vested that jurisdiction in the governor as chancellor and ordinary. *Arts. VIII, XXII, 5 Thorpe's Am. Charters, pp. 2596, 2598. In Re Coursen's Will, 4 N. J. E. 408, 412, 415; In Re Hodnett, 65 N. J. E. 329, 337-8.*

When the powers of government were separated by the Constitution of 1844, the office and jurisdiction of the ordinary and judge of the Prerogative Court were vested in the chancellor, where they still remain. *Dickinson's Probate Court Practice (1884) pp. 2-5.*

From 1844 onward to and including the present time, the State Constitution has provided:

> "The judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require."
>
> *Art. VI, Sec. I, pgf. 1.*

"The chancellor shall be the ordinary or surrogate general, and judge of the prerogative court."

Art. VI, Sec. IV, pgf. 2.

5 Thorpe's Am. Charters, 2608, 2609,

The Constitution of 1776 provided "That the common law of England, as well as so much of the statute law, as have been heretofore practiced in this colony, shall still remain in force, until they shall be altered by a future law of the legislature; * * *" (*Art. XXII*). Like provision has been carried through to the present constitution (*Art. X*) *5 Thorpe's Am. Charters, pp. 2598, 2613.*

By the above inclusion of the Prerogative Court as part of the judicial system of the state, that tribunal became a judicial tribunal, as well as a constitutional court, which could not be altered or abolished. There was nothing to prevent the legislature from extending its jurisdiction to additional subjects, but the legislature could not deprive the decrees of that court of their quality of being conclusive. *Harris* v. *Vanderveer's Executor* (Court of Errors and Appeals), 21 N. J. Eq. 424, 427-8.

The jurisdiction of the Prerogative Court, both in England and in the Colony and State of New Jersey, including its appellate jurisdiction, is discussed in *Dickinson's Probate Court Practice, pp. 7-10, 11-12.*

Adhering to its common law forms and procedure, and regarding succession taxes as kindred to the succession of prosperity, the legislature of New Jersey, from the enactment of the first succession tax act in 1909 (*N. J. P. L. 1909, Ch. 228, sec. 18, p. 334*), has consistently provided the right of appeal from the appraisement or assessment, to the Ordinary, as the judge of the Prerogative Court, and has conferred upon him "jurisdiction to hear and determine all questions" (*ibid. p. 335*) in the same manner as he has jurisdiction to hear and determine all questions relating to other matters within his appellate

jurisdiction. The statute prescribed no practice or procedure, but left that to the established forms in that court, namely, (a) petition of appeal; (b) answer; (c) order of reference to a vice ordinary; (d) hearing; (e) findings of fact and conclusions of law; (f) final decree; and such other preliminary or intermediate proceedings as may be necessary (*Ans. pp. 49-95*).

In New Jersey, as in England, the Prerogative Court has always had the quality of a court of equity, and the rules of equity practice were followed in its procedure. *Bugbee* v. *Van Cleve*, 99 N. J. Eq. 825, 833.

Except for a few special writs (none of which are applicable here), courts following equity procedure were without power to enforce their decrees except by citation for contempt. *2 Daniell's Chy. Pl. & Pr. (Perkins Am. Ed.) 1054 et seq.* For that reason section 21 of the inheritance tax act provides for a citation to bring the parties before the Ordinary to show cause why such tax should not be paid in accordance with its decree. The common law procedure on such a citation was to punish for contempt. Declaratory of that procedure the legislature, in 1900, enacted a law respecting the Prerogative Court, and the power and authority of the Ordinary; section 7 of which reads as follows:

> "7. If any person shall neglect or refuse to obey any citation, or to perform any sentence or decree of the ordinary or judge of the prerogative court, it shall be lawful for such ordinary and such court to cause such person or persons, by process directed to any sheriff of any county of this state, to be taken and imprisoned until he shall obey the said citation, or perform the said sentence or decree; and every sheriff is hereby directed to cause all such process to him at any time directed, to be duly executed, and to confine the person against whom such process shall be issued, as in execution, until he shall be delivered by due course of law; and if any sheriff shall neglect his duty therein, he shall be answerable

to the party aggrieved in such manner as he would be answerable upon process of a like nature issuing out of the supreme court." (*N. J. P. L. 1900, Ch. 148, p. 347.*)

In the transfer inheritance tax act of 1909 (now sec. 21) the legislature directed that proceedings on such citation shall conform to the practice prevailing in the Prerogative Court, and added, that the decree of the court thereon shall, upon request of the State Tax Commissioner, be docketed and filed by the Clerk of the Supreme Court, or by the County Clerk of any county, with the effect of a judgment lien upon the property of the estate, and that execution be issued thereon, in accordance with the rules and practice appertaining to judgments of other courts docketed therein, and, particularly, with the practice of docketing in the Supreme Court clerk's office decrees of the New Jersey Court of Chancery (*N. J. P. L. 1902, p. 524*).

Thenceforward, collection is pursued as prescribed for civil judgments, in "An Act respecting executions" (*N. J. Revision 1877, pp. 389 et seq.; 2 N. J. Comp. Stat. pp. 2243, et seq.*).

Since the only proceeding which the statute prescribes for enforcing the court's decree is that described in sections 21 and 22, the injunction (either preliminary or final) sought by appellants, if granted by the court, could, in effect, do nothing but enjoin the procurement of the citation as a process to compel the parties to obey the final decree of the court. The jurisdiction of the court continues, and the matter is still a proceeding in that court until the decree is satisfied. *Ruggles* v. *Simonton,* 20 Fed. Cas. No. 12,120; *Am. Ass'n.* v. *Hurst,* 59 Fed. 1; *Leathe* v. *Thomas,* 97 Fed. 136; *Ke-Sun Oil Co.* v. *Hamilton,* 61 Fed. (2d) 215, 218.

Appellants labor under the mistaken impression that the statutory limit of one year allowed for appeal to the Court of Errors and Appeals constitutes a *minimum,* rather

than a maximum, limit. The argument amounts to the claim that that provision conferred a vested right to immunity from earlier action to enforce the decree of the Prerogative Court; that theory implies that during that appeal period appellees *cannot* take any action to enforce the court's final decree, and that meanwhile appellants *need* not obey that decree. If that is so, the extraordinary remedy by writ of injunction in the federal court is unnecessary, since there was nothing to enjoin.

Appellants are also mistaken in the argument that mere intention to appeal to the state court of last resort (not yet expressed by notice of appeal) affords immunity from the enforcement of the decree. It is encumbent upon them to make a selection of remedies between the state and federal courts. They have no right to go through the state courts as far as they choose, then suddenly switch to the federal courts, and at the same time hold open a line of retreat through the state courts if they are disappointed in the federal court.

If the statements in the last paragraph on page 6 of the brief are true, an application for injunction in the federal court was unnecessary, since an equally effective stay was obtainable (as of right) on an appeal to the state court of last resort.

There was, therefore, a "proceeding" in a court of the State of New Jersey, within the meaning of Section 265 of the Judicial Code, which appellants sought to enjoin. In that respect the decree of the District Court was correct.

II.

The proceedings in the New Jersey Courts were judicial.
(pp. 7-12.)

Except to state the fact that the decree of the Prerogative Court was final and conclusive, and binding upon the parties unless and until reversed by a higher court, nothing need be added to what has been said under Point I respecting the character of that court, particularly since the decree of the District Court was not rested upon the final decree of that Court, but upon the final judgment of the State Supreme Court.

It matters not whether the jurisdiction of a court is conferred by the constitution or by statute, the character and effect of the proceedings therein determines whether its function is administrative or judicial. *City Bank Farmers Trust Co.* v. *Schnader,* 291 U. S. 24. Otherwise all the federal courts, save this court, would be administrative, since they are created, and their jurisdiction is defined, by statute.

Nor does it matter by what vehicle of pleading the case is brought before the court. Proceedings instituted by a motion are sufficient. *American Surety Co.* v. *Baldwin,* 287 U. S. 156, 165.

The New Jersey Supreme Court is a constitutional court, (*Const. Art. VI, sec. IV, pgf. 2, supra*), with the powers and prerogatives of the Court of King's Bench in England (*Const. Art. X, supra*). The power of that court to review on *certiorari* the final decree of the Prerogative Court was not conferred by statute; it was one of the inherent prerogatives of the court under the common law. *State* v. *Justices, etc. of Middlesex County,* 1 N. J. L. 283 (old paging 244); *Dufford* v. *Decue,* 31 N. J. L. 302, 305, 307; *Jersey City* v. *Lembeck,* 31 N. J. E. 255.

That inherent power of review on *certiorari* has, from the beginning, been exercised to review tax assessments generally, *Black's Law of Taxation, 4th ed. Sec. 279a, p. 394;* and extends to the review of inheritance taxes. *Black's Law of Taxation, 4th ed. Sec. 129h, p. 181; Roebling's Estate, 91 N. J. E. 72, 75.*

The provisions of Section 11 of the Certiorari Act, quoted at page 9 of appellants' brief, are merely declaratory of the common law, and do not, and could not, diminish the inherent power of the court, under the New Jersey constitution (cases cited in the last two preceding paragraphs and *Harris* v. *Vanderveer's Executor*, 21 N. J. E. 424, 427.

In *Royal Mfg. Co.* v. *City of Rahway*, 75 N. J. L. 416, and *Trenton & Mercer County Tr. Co.* v. *Mercer County Board of Taxation*, 92 N. J. L. 398, cited on page 9, and *Gibbs* v. *State Board*, 101 N. J. L. 371, cited on page 10, the Supreme Court reviewed assessments made by boards of assessors, who were admittedly administrative bodies, and not the final decree or judgment of a court, yet in a like case subsequently decided (in 1926) the Court of Errors and Appeals held that the revisory power conferred upon the Supreme Court by Section 11 of the Certiorari Act "is not mandatory or obligatory," and sustained that court in setting aside the assessment and remanding the case back to the state tax board for further proceedings not inconsistent with its decision. *Kearny* v. *State Board*, 103 N. J. L. 26, 27.

The essential qualities of judicial tribunals, as defined in *City Bank Farmers Trust Co.* v. *Schnader, supra,* were present in both the Prerogative and the Supreme Courts. Section 20 of the inheritance tax act conferred upon the Prerogative Court jurisdiction "to hear and determine all questions in relation to any tax levied under the provisions of this act" (*N. J. P. L. 1909, p. 335*). The same power,

already inherent in the Supreme Court, is declared by Section 11 of the Certiorari Act (*Appl. Br. p. 9*). In both courts the proceedings were *inter partes* (*Ans. pp. 71, 87, 96, 104*); the court had power to decide, and did decide, all questions as to the validity, as well as to the amount, of the assessment; the final decree of one, and the final judgment of the other, were both final and conclusive judgments of courts of record of competent jurisdiction, binding upon the parties, unless and until reversed by a higher court.

It is true that the state was not a party *eo nomine* in either court, but the state was the real party in interest and was represented by a state officer in his official capacity, who is one of the defendants in the same representative and official capacity in this suit. If, as Appellants claim (p. 12), not the state, but only the State Tax Commissioner, had an interest in those proceedings or their results, why are the other state officers joined as defendants (or appellees here) in these suits? When collected, the tax goes to the state, and not to the individuals. (See section 1 of the inheritance tax act quoted at the beginning of this brief.)

> "The state is the principal and the action of her officers rightly may be imputed to her, even though a suit for injunction might be against them." *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 591.

III.

Res Judicata.

(pp. 12-14.)

The only "intention" to appeal to the Court of Errors and Appeals which New Jersey practice recognizes is a Notice of Appeal (*N. J. S. C. Rule 137*). No such notice of appeal has been served. A declaration of such intention in the complaint (pfg. 40) amounts to nothing.

It is claimed (*pp. 13-14*) that the right to invoke the jurisdiction of the federal court cannot be barred by a plea of *res judicata*, unless the pleaded judgment is either that of the state court of last resort and the period for appeal or petition for certiorari to this court has expired, or is the judgment of a lower court in which the parties have acquiesced without resort to the appellate court. In support of that claim they cite *Eastern B. & L. Assn. of Syracuse* v. *Welling*, 103 Fed. 352, 355; *Grubb* v. *Public Utilities Commission*, 281 U. S. 470, and *American Surety Co.* v. *Baldwin*, 287 U. S. 156.

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The second case holds squarely opposite to appellant's contention under this point. It sustained the plea of *res judicata* on a judgment of the state court in a proceeding which was instituted after the suit in the federal court, in which the judgment was pleaded, was commenced, and

was carried to conclusion and the judgment entered before the District Court proceeding was concluded. There, as here, the only ground of federal jurisdiction alleged in the bill was that the suit arose under the Constitution of the United States and involved more than $3,000 (p. 473).

The court held that the state and federal courts have concurrent jurisdiction of suits arising under the Constitution and laws of the United States, except where otherwise expressly restricted by Congress; that the suit was of such a nature that it could proceed in both courts, in virtue of their concurrent jurisdiction, until there was a final judgment in one, when that judgment would become conclusive in the other as *res judicata* (p. 476).

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(p. 167) "Since the constitutional issue as to jurisdiction might have been presented to the state Supreme Court and reviewed here, the decision is a bar to the present suit insofar as it seeks to enjoin the enforcement of the judgment for want of jurisdiction."

(p. 169) "Having invoked the state procedure which afforded the opportunity of raising the issue of lack of notice (due process of law), the Surety Company cannot utilize the same issue as a basis for relief in the federal court."

IV.

Jurisdiction under Section 266 of the Judicial Code.

(p. 15)

It is precisely upon the difference between this case and that of *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24, mentioned by appellant under this point, that we rest our view that section 266 does not apply to this case. Admittedly, the federal court intervened, in the Schnader case, at the end of the administrative appraisement of the property involved; in this case the jurisdiction of the federal court was not invoked until two judicial tribunals had reviewed, and entered final judgments on the review of, the appraisement.

Under Point I of this brief it is shown that what appellants sought to enjoin in the District Court was nothing more nor less than the process of entering judgment and issuing execution upon a final decree of the Prerogative Court. Appellants do not seek to enjoin the carrying out of a statute which requires them to do something, or forbids them to do something, under a penalty, nor do they seek to restrain the enforcement of an order or regulation of an administrative board or body. They seek to enjoin appellees from enforcing a final decree of a judicial tribunal. If this view is correct, it was not a case for

three judges. The result may be that the statutory court had no jurisdiction to make the decree appealed from, but candor requires the presentation of this view to the court. However, if that is so, then it follows that an injunction (either interlocutory or final) cannot be issued in any federal court in this case, and the complaint should be dismissed.

V.

The Pennsylvania Suit.

(pp. 16-17.)

Under this point appellants argue that the judgment of the Pennsylvania Supreme Court was binding on all the parties to this suit, whether they were parties to that suit or not, because the judgment in the Pennsylvania case was entered in a proceeding *in rem*. It is true the proceeding was *in rem*, but the very reason why the Prerogative Court held that the Pennsylvania court had no jurisdiction was because the *res* was not within the jurisdiction of the Pennsylvania court. Not a dollar, or an article, of the property of the estate was located in Pennsylvania and obviously it could not exercise jurisdiction *in rem* of property located beyond its territorial limits. The fact was that not only was the *res* located in New Jersey, but that it was, and still is, being administered in a proceeding *in rem* in the Orphans' Court of Burlington County, New Jersey (*Ans. p. 74*).

The attempt, in the fourth paragraph on page 16 to implicate the State of New Jersey into some form of participation in the Pennsylvania litigation is obviously futile.

VI.

Conclusion.

Appellants having voluntarily submitted to the New Jersey Prerogative Court (*Petition of Appeal, Ans. pp. 49-59*) and to the Supreme *Court* (*Reasons, Ans. pp. 96-103*) all questions of law and fact alleged in the bill of complaint in this suit and obtained a final adjudication of those questions in each of those courts, and having the opportunity as a matter of right (with a stay against the collection of the tax) to appeal from the final judgment of the state Supreme Court to the New Jersey Court of Errors and Appeals, and thereafter (in case of an adverse decision) to invoke a review in this court (*American Surety Co.* v. *Baldwin*, 287 U. S. 166, 167), no substantial federal question is presented on this appeal.

For the foregoing reasons this appeal should be dismissed.

Respectfully submitted,

DAVID T. WILENTZ,
Attorney General.
Solicitor for Appellees.

DUANE E. MINARD,
GEORGE S. HOBART,
Counsel.

Dated: July 10, 1935.

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CHARLES ELMORE C

Supreme Court of the United States

October Term, 1935.

ELINOR DORRANCE HILL,
Appellant,
vs.
J. H. THAYER MARTIN, State Tax Commissioner of State of New Jersey; WILLIAM D. KELLY, State Supervisor, Inheritance Tax Bureau of State of New Jersey; FRANK J. MURRAY, Comptroller of State of New Jersey; WILLIAM H. ALBRIGHT, State Treasurer of State of New Jersey, and DAVID T. WILENTZ, Attorney General of State of New Jersey,
Appellees.

No. 193.

ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M. D., ARTHUR C. DORRANCE and CAMDEN SAFE DEPOSIT AND TRUST COMPANY, Executors of the Last Will and Testament of JOHN T. DORRANCE, deceased,
Plaintiffs,
vs.
Same,
Defendants.

No. 194.

Appeals from the District Court of the United States
For the District of New Jersey.

BRIEF IN BEHALF OF APPELLEES.

DAVID T. WILENTZ,
Attorney General,
Solicitor for Appellees,
State House, Trenton, N. J.

DUANE E. MINARD,
GEORGE S. HOBART,
Of Counsel.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

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Supreme Court of the United States

October Term, 1935.

ELINOR DORRANCE HILL, *Appellant,* vs. J. H. THAYER MARTIN, State Tax Commissioner of State of New Jersey, WILLIAM D. KELLY, State Supervisor, Inheritance Tax Bureau of State of New Jersey, FRANK J. MURRAY, Comptroller of State of New Jersey, WILLIAM H. ALBRIGHT, State Treasurer of State of New Jersey and DAVID T. WILENTZ, Attorney General of State of New Jersey, *Appellees.*	No. 193.
ETHEL M. DORRANCE, GEORGE MORRIS DORRANCE, M. D., ARTHUR C. DORRANCE and CAMDEN SAFE DEPOSIT AND TRUST COMPANY, Executors of the Last Will and Testament of JOHN T. DORRANCE, deceased, *Plaintiffs,* vs. Same, *Defendants.*	No. 194.

Appeals from the District Court of the United States For the District of New Jersey.

BRIEF IN BEHALF OF APPELLEES.

Opinion of the District Court.

The opinion of the District Court has not yet been officially reported; it appears in the record at pp. 221-230.

Jurisdiction.

The jurisdiction of this court is asserted under section 266 of the Judicial Code (U. S. Code, Sec. 380). Both cases come to this court by direct appeal from decrees of the District Court entered June 4, 1935, denying "for want of jurisdiction" the prayer of the bills for interlocutory injunction.

The appellants duly filed a statement as to the jurisdiction of this court; the appellees filed a statement opposing jurisdiction, and moving that the appeals be dismissed and the causes remanded to the District Court, with instructions to dismiss the bills.

On October 14, 1935, probable jurisdiction was noted; and further consideration of the motions to dismiss was postponed to the hearing on the merits.

Statement of the Case.

The bills of complaint were filed on April 1, 1935 (amended bills on April 10, 1935), alleging the threatened violation by defendants of certain rights of the plaintiffs under the Federal Constitution, and praying for an injunction "temporary until hearing and perpetual thereafter," enjoining the defendants and their agents, etc., "acting under and by virtue of their authority," from collecting or attempting to collect inheritance tax from plaintiffs on the transfer of intangible personal property, from refusing to issue tax waivers, and from refusing to release from escrow the personal property now held in escrow, subject to the control of the defendants, or any of them (*R. 17 and 506, 7*).

Rules to show cause why an interlocutory injunction should not issue were allowed, and the motion for such injunction was argued before a court convened under section 266 (*U. S. Code 380*).

From the pleadings and affidavits the following facts appear without dispute:

The tax, the collection of which plaintiffs prayed the court to restrain, had been ascertained, after appraisal of the property of the estate, by the defendant, Martin, as State Tax Commissioner of the State of New Jersey;

On an appeal by the executors to the Prerogative Court of the State of New Jersey (taken pursuant to the statute by authority of which the tax was assessed), the determination of the Commissioner was affirmed (with certain modifications, not now material).

The executors thereupon reviewed the judgment of the Prerogative Court in the New Jersey Supreme Court by writ of certiorari issued by that court on application of the executors.

The New Jersey Supreme Court affirmed the judgment of the Prerogative Court (*R. 155, 6*), and no appeal has been taken from the judgment of the New Jersey Supreme Court.

The plaintiffs claimed and the defendants denied that said judgment of the Supreme Court was part of the administrative procedure for the review of the assessment, and was not a judicial determination or the judgment of a "court."

The District Court, after referring to these facts, said:

> "We are firmly of opinion that the jurisdiction of the Supreme Court of New Jersey in reviewing the action of statutory agencies created for the purpose of assessing and collecting taxes is judicial * * *, made so by the Constitution of New Jersey, and that the Court is of sufficiently high rank to be recognized and on occasion followed by court of the United States * * *; that the administrative proceedings in respect to the tax ended at the latest with the judgment of the Prerogative Court and that in consequence the executors on turning to

the federal district court after the judicial decision by the Supreme Court of New Jersey not only encountered a plea of res judicata but were confronted by Section 265 of the Judicial Code which, going directly to the jurisdiction of this Court to grant the relief asked for, provides that: 'A writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except * * *'" (*R. 227, 8*).

The District Court accordingly concluded that it was without jurisdiction and decrees were entered denying the prayer for interlocutory injunction (*R. 230, 231*).

Plaintiffs appealed to this court, obtaining a stay, pending the determination of said appeals. The assignments of error are the same in both cases; they are, in substance, that the District Court erred in denying the interlocutory injunction (*R. 232*).

SUMMARY OF ARGUMENT.

I.

The proceedings in the Supreme Court of New Jersey in reviewing by certiorari the final decree of the Prerogative Court, were judicial.

(*a*)

History of the New Jersey Assessment.

(*b*)

Statutory Proceedings for Review of Assessment.

(*c*)

Jurisdiction of New Jersey Supreme Court to Review Tax Assessments.

(*d*)

An Injunction, if Granted as Prayed, Would Violate Section 265 of the Federal Judicial Code.

(e)

The Suits are In Fact Against the State of New Jersey.

II.

The judgment of the Supreme Court of the State of New Jersey is res judicata.

III.

Section 266 of the Judicial Code does not apply to this case.

IV.

Appellants have not shown any irreparable injury or other grounds of equity jurisdiction.

V.

The judgment of the Supreme Court of the State of New Jersey does not violate the full faith and credit clause.

VI.

Appellants are in laches.

VII.

The evidence shows that the domicil of the decedent at the time of his death was in the State of New Jersey.

VIII.

Appellants are estopped from claiming that the domicil of the decedent was in Pennsylvania.

IX.

Interlocutory injunction should not be issued if the questions either of fact or of law are doubtful.

ARGUMENT.

I.

The proceedings in the Supreme Court of New Jersey in reviewing by certiorari the final decree of the Prerogative Court, were judicial.

(*a*)

History of the New Jersey Assessment.

At the time of the death of the testator, John T. Dorrance, on September 21, 1930, the statute of New Jersey imposed inheritance taxes of the value of $500 or over, when the transfer is by will or by intestate laws of the State, from any person dying seized or possessed thereof, "while a resident of the State" (*inter alia*) upon the transfer of any property (*N. J. P. L. 1929, pp. 250-6*); the statutes declared the taxes to be due and payable on the date of death, with interest at 10% after one year from that date, until paid; and such taxes became a lien on all property of decedent (*N. J. P. L. 1922, pp. 297, 8*).

Administrators, executors or trustees having in charge any trust, legacy or property for distribution, subject to such tax are required to deduct and pay the tax therefrom, and are forbidden to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon (*N. J. P. L. 1909, p. 330*). They are forbidden to turn over or transfer any property of an estate until the tax due thereon, and interest, has been paid, on pain of being personally liable for such tax and interest in an action of debt in the name of the State (*N. J. P. L. 1918, pp. 1074, 1077*).

Prior to July 1, 1931, the Comptroller of the Treasury of the State of New Jersey was the officer who administered the inheritance tax laws; by Chapter 303, N. J. Laws of 1931, p. 749, these duties were transferred

to the defendant, Martin, as Tax Commissioner—an office created by Chapter 336, N. J. Laws of 1931 (pp. 823-5); said defendant is the duly appointed and acting State Tax Commissioner and is charged with the power and the duty to assess and collect inheritance taxes.

The testator died on September 21, 1930 at his residence known as "Pomona Farms," in the Township of Cinnaminson, Burlington County, New Jersey (*R. 17, 20*). His last will and testament, declaring himself to be of the Township of Cinnaminson, in the County of Burlington and State of New Jersey (*R. 113, 126, 127*), was offered for probate on October 1, 1930, before the Surrogate of Burlington County on the sworn petition of the executors (*R. 113, 129, 130*). On the following day (October 2, 1930) an order for probate was entered by the Surrogate of Burlington County, New Jersey, and letters testamentary on that will were issued by him to said executors (*R. 131, 2*). Thereupon they executed their undertaking to comply with the provisions of federal and state tax laws and to truly perform their duties as executors (*R. 131*); and on April 17, 1931 (*R. 55*) they filed their inventory and appraisement in the office of the Surrogate of Burlington County, showing the gross value of the estate as $114,850,733.39 (*R. 135*).

The executors have administered the estate under the jurisdiction of the Orphans' Court of Burlington County from the date of the probate of the will to the present time and have received allowances, on two accountings, of commissions thereon of $1,500,000 and counsel fees of $250,000 (*R. 143, 152*), which, with additional commissions, was increased by $533,784.81 by the decree of the Prerogative Court (*R. 100*).

No application for probate of decedent's will has ever been made in any state other than New Jersey; and from the date of the admission of said will to probate by the

Surrogate of Burlington County, New Jersey, decedent's estate has been administered solely according to the provisions of that will and under authority of and pursuant to the orders of the Surrogate Court of Burlington County, the Orphans' Court of that county, and the Prerogative Court of the State of New Jersey (*R. 113*).

On April 6, 1931, pursuant to and in accordance with the statutes of the State of New Jersey and the Regulations of the Tax Department of that state, the executors filed a Return with the Inheritance Tax Bureau (and on August 17, 1931 an amended Return), stating, under oath, that the decedent was late of Burlington County, New Jersey, that his estate consisted of bank deposits, securities and miscellaneous items amounting to the sum named in the Returns from which certain deductions were claimed, and that the bonds, stock certificates, and other evidence of title to the personal property were then and still are located in the State of New Jersey (*R. 56, 117*).

In support of the Returns so filed in New Jersey Hon. William D. Lippincott, Proctor for Executors, who for many years had been personal counsel of the decedent and of the Campbell Soup Company (*R. 315*), and who had, himself, served a term as judge of the Court of Common Pleas of Burlington County (*R. 314*)—which, *ipso facto*, also made him the Judge of the Orphans' Court of that county—and who drew the will in question (*R. 319-321*), submitted, on May 2, 1931, to the Comptroller of the State of New Jersey (he then being the officer who administered the inheritance tax), a document entitled "Statement of Facts as to the Domicile of Dr. John T. Dorrance in New Jersey" with a letter to the State Supervisor of the Inheritance Tax Bureau wherein he stated that he had received from the Register of Wills of Delaware County, Pennsylvania, a notice and appraisement (copy enclosed) claiming that the decedent was a resident of Radnor Township, Pennsylvania, and that taxes were due

that state amounting to the sum of $31,465,200.00, based upon a valuation of $199,999,000.00, which Judge Lippincott said "was fictitious and without foundation save newspaper reports"; he expressed his opinion that "there is no doubt whatever that if the question of decedent's domicile were to be decided in the New Jersey courts, decedent's domicile must be found to be in Cinnaminson Township, Burlington County, New Jersey" (*R. 463-7; 477-489*).

On May 13, 1931, the Comptroller, in a letter to Judge Lippincott, referred to the proof of domicil submitted with his letter of May 2, 1931, and announced the following decision on that question:

> "After a very careful consideration of all available data, including the oral statement submitted by you during your recent appearance, the Department has concluded that the legal domicile of the decedent at the date of his death and for many years prior thereto was Cinnaminson, Burlington County, New Jersey. The completion of the transfer inheritance tax proceeding is being held in abeyance pending the receipt of the additional information called for by letter addressed to the Camden Safe Deposit & Trust Co., under date of April 27, 1931" (*R. 467*).

The additional information referred to by the Comptroller was supplied by the Camden Safe Deposit & Trust Company, one of the executors, in an amended and corrected Return, transmitted on August 17, 1931, to defendant, Martin (who had then succeeded the Comptroller in charge of transfer inheritance taxes (*R. 468*)). That return is sworn to by Mr. Norcross, Vice-President of that corporate executor; like the return of April 6, 1931, it is entitled "In the matter of Estate of John T. Dorrance, late of Burlington County" (*R. 468*). It shows that his estate, the market value of which was therein estimated at $115,121,518.92 consisted of personal property, and almost

entirely of intangible property (*R. 469*). Endorsed on that Return is a report of the District Supervisor and Appraiser in which he sets up the value of the personal property as stated in that Return and, after deducting debts and expenses, that report shows the net amount of the estate for distribution as $112,055,400.86 (*R. 469*).

On October 17, 1931, the New Jersey State Tax Commissioner assessed inheritance taxes on direct transfers in the sum of $12,247,333.52, and a proposed compromise tax on contingent remainders and trust estates of $4,521,143.90 (*Par. 39 of Bill, R. 10; Par. 39 of Answer, R. 43; 469*).

On November 16, 1931, notice of the assessment was served by mail upon one of the executors, and Judge Lippincott was advised to the same effect on the same date (*R. 469, 470*); the proposed compromise assessment was vacated by the Prerogative Court, without prejudice, in respect to assessment of taxes which might be made when the contingencies named in the will would eventuate or compromise same in accordance with the statute (*R. 99, 100*); and is not now in question.

On December 4, 1931, the Commissioner received a petition of the executors verified by Judge Lippincott, reciting among other things, that subsequent to the making the assessments of August 17, 1931, the executors had obtained a large amount of information, facts and evidence relating to and bearing upon the domicil of the decedent which was not in their possession at the time those assessments were made, and that the executors were desirous of submitting such additional information, facts and evidence to the respondent before the final determination of those assessments, which they deemed necessary to be considered by respondent before final action. They prayed that the assessments of October 17, 1931, be opened, set aside and cancelled, and that the proceedings

before respondent be opened and permission be granted to submit such further and additional facts and evidence (*R. 470-3*).

Up to that time the only information, facts or evidence submitted by the executors to the defendant, Martin, or his predecessor had consisted of proof of decedent's domicil in New Jersey. Their petition to set aside the assessments and open the proceedings gave no indication of any change of attitude. It did recite that the Commonwealth of Pennsylvania claimed that decedent was domiciled therein and had appraised his estate for inheritance taxes under Pennsylvania laws, and that the appeal from that appraisement had been heard by the Orphans' Court of Delaware County, Pa., after the filing of those assessments, and that a large amount of testimony relating to and bearing upon decedent's domicil was presented before the Orphans' Court of Delaware County, Pennsylvania, upon that hearing, but there was no indication that that testimony was different, or would produce a different result, than the testimony submitted before the New Jersey Tax Department or any claim by the executors that decedent was not domiciled in New Jersey (*R. 470-3*).

The reference to the claim of Pennsylvania was not new, since it was stated and discussed in Judge Lippincott's letter of May 2, 1931 when he submitted proof to the Comptroller (*R. 463*).

Pursuant to the prayer of said petition, the Tax Commissioner on December 12, 1931, set aside and cancelled the assessments of October 17, 1931, and opened the proceedings thereon, and gave to the executors permission to submit further and additional information, facts and evidence, relating to and bearing upon the domicil of decedent, and so advised Judge Lippincott by letter of the same date (*R. 473*) which was acknowledged on December 14, 1931, by a letter in which Judge Lippincott stated that

the additional evidence to be submitted would consist of the evidence presented before the Orphans' Court of Delaware County, Pa., on the appeal from the Pennsylvania appraisement, and that when the argument of that case was completed he would submit further and additional information, facts and evidence relating to this estate (*R. 473, 4*).

On March 7, 1932, the opinion and decree of February 15, 1932, of the Orphans' Court of Delaware County, Pa., setting aside the Pennsylvania appraisement and decreeing that decedent was domiciled in New Jersey at the time of his death, was submitted to defendant, Martin, together with a copy of the testimony and exhibits in that case (*R. 474*). At some later date, not disclosed by the record, the executors also submitted to the Tax Commissioner the opinion (and dissenting opinions) of the Pennsylvania Supreme Court reversing the decree of the Orphans' Court of Delaware County, Pa., and holding that decedent was domiciled in Pennsylvania (*R. 474*).

On October 10, 1932, transfer inheritance taxes on the estate of decedent were reassessed in the same manner and in the same amounts as on October 17, 1931 (*R. 475*); and on the same date notices of those assessments were served upon Judge Lippincott by mail (*R. 475*); that service was acknowledged by a letter of October 12, 1932, in which he referred to the decision of the Supreme Court of Pennsylvania on September 24, 1932, holding decedent was domiciled in that state, and announced his intention to appeal from the New Jersey assessments (*R. 476*).

Pursuant to the statute, the executors served notice of appeal to the Ordinary, which was afterwards, on March 14, 1933, amended (*R. 65-73*); defendant, Martin, as State Tax Commissioner, duly filed an answer thereto on March 28, 1933 (*R. 73-81*); and the matter came on to be heard before the Prerogative Court in accordance with the New Jersey statute.

On May 11, 1934, the final decree of the Prerogative Court was filed, sustaining the assessment, except as to the assessment on contingent remainders which was vacated, without prejudice (*R. 98-100*). See *In Re Estate of John T. Dorrance, Deceased*, 115 N. J. Eq. 268, and 116 N. J. Eq. 204.

The executors thereupon obtained a writ of certiorari from the New Jersey Supreme Court to review the decree of the Prerogative Court; and in support of that writ, filed Reasons which raised all the questions (and several more) now sought to be raised by the bills of complaint (*R. 100-106*).

On February 8, 1935, the New Jersey Supreme Court filed its decision on which the judgment of that court was duly entered, dismissing the writ of certiorari and affirming the assessment as corrected by the decree of the Prerogative Court (*R. 155-7*). See *Dorrance* v. *Martin*, 13 N. J. Misc. Rep. 168.

(*b*)

Statutory Proceedings for Review of Assessment.

Under the New Jersey statute the State Tax Commissioner appoints an appraiser, who notifies the parties interested of the time and place of the appraisement of the property of decedent; it is made the duty of the appraiser to appraise the property "at its fair market value" and for that purpose he may issue subpoenas, compel the attendance of witnesses and take evidence of witnesses; the appraiser then reports the value to the State Tax Commissioner, together with such other facts as the commissioner may require; from said report the commissioner "shall forthwith assess and fix the cash value of such estate and levy the tax to which the same is liable, and shall immediately give notice thereof, by

mail, to all parties known by said State Tax Commissioner to be interested therein" (*N. J. P. L. 1931, p. 763*).

The statute then provides:

> "Any person or corporation dissatisfied with said appraisement or assessment may appeal therefrom to the Ordinary of this State within sixty days after the making and filing of such assessment, on giving a bond, approved by the Ordinary of this State, conditioned to pay said tax so as aforesaid levied by the said State Tax Commissioner, together with interests and costs, if the said tax be affirmed by the Ordinary" (*Sec. 18*) (*N. J. P. L. 1931, p. 764*).

The statute gives the Ordinary jurisdiction "to hear and determine all questions in relation to any tax levied under the provisions of this act". (*Sec. 20, N. J. P. L. 1909, p. 335*).

The statute then provides for the enforcement of the collection of unpaid taxes, as follows:

> "If it shall appear to the State Tax Commissioner that any tax which has accrued under this act has not been paid according to law said Commissioner *shall* report such fact, in writing, to the register of the Prerogative Court, and said register shall issue a citation citing the persons or corporations interested in the property liable to said tax to appear before the Ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid; the service of such citation and the subsequent proceedings had thereon shall conform to the practice prevailing in the Prerogative Court. Upon the making of any decree the register of the Prerogative Court shall, upon the request of the State Tax Commissioner, furnish one or more copies of said decree, and the same shall be docketed and filed by the clerk of the Supreme Court, or by the county clerk of any county in this State, upon the request of the State Tax Commissioner, and the same shall have the same effect as a lien

by judgment, and execution shall issue thereon according to the rules and practice appertaining to other judgments docketed and filed with said respective clerks" (*Sec. 21*) (*N. J. P. L. 1931, p. 764*).

"Whenever the State Tax Commissioner shall have reason to believe that any tax is due and unpaid under this act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, he shall notify the Attorney-General of this State, in writing, of such failure to pay such tax, and the said Attorney-General, when so notified, if he have probable cause to believe that a tax is due and unpaid, shall prosecute the proceeding before the Ordinary of this State, as provided for in section twenty-one of this act, and the State Treasurer shall, on the warrant of the Comptroller and the certification of the State Tax Commissioner pay all the expenses of said proceeding" (Sec. 22) (*N. J. P. L. 1931, p. 765*).

The references in the statute to the "Ordinary" mean the Prerogative Court of the State of New Jersey. *Bugbee* v. *Van Cleve*, 99 N. J. Eq. 825.

The decree of the Prerogative Court cannot be reviewed by appeal to the Court of Errors and Appeals of New Jersey, but only in the New Jersey Supreme Court by writ of certiorari. *Roebling's Estate*, 91 N. J. Eq. 72, 75.

But as the Court of Errors and Appeals is the highest court of that state, either party may take an appeal as of right from the judgment of the New Jersey Supreme Court on certiorari.

The time limit for such appeal is one year (*2 Comp. Stats. of N. J. of 1910, p. 2208, sec. 2; 2 Cum. Supp. of 1924, p. 2818, secs. 163-301; Chapter 62, p. 109, N. J. Laws of 1916*).

(c)

Jurisdiction of New Jersey Supreme Court to Review Tax Assessments.

It is well settled that the New Jersey Supreme Court has exclusive jurisdiction of allowance of prerogative writs, including the writ of certiorari.

It will be noted that there is no express provision in the New Jersey Inheritance Tax for a review by the New Jersey Supreme Court on certiorari, or otherwise, either of an assessment, or of a decree of the Ordinary relating to such assessment.

The power of the New Jersey Supreme Court to review a decree of the Ordinary depends upon the inherent power of that court to review proceedings of statutory tribunals.

The jurisdiction of that court to review the proceedings of such a tribunal, is a matter of established judicial history in the State of New Jersey.

Such jurisdiction is not a matter of statute but was inherited from the Court of King's Bench; the New Jersey Constitution perpetuates in the Supreme Court of the State the exclusive power of the Court of King's Bench relative to Prerogative writs, such as certiorari, mandamus, etc. The discussion of the power of the New Jersey Supreme Court began with the case of *State* vs. *Justices, etc. of Middlesex County,* 1 N. J. L. 284 (244).

Further discussion of the power and of the history of that court will be found in the following: *Ludlow* v. *Ludlow Executors,* 4 N. J. L. 444 (387); *Chandler* v. *Monmouth Bank,* 9 N. J. L. 127; *Carron* v. *Martin,* 26 N. J. L. 594, 600; *Dufford* v. *Decue,* 31 N. J. L. 302; *Flanagan* v. *Plainfield,* 44 N. J. L. 118; *Conger* v. *Convery,* 52 N. J. L. 417, 429 (53 N. J. L. 658); *Roesel* v. *State,* 62 N. J. L. 216; *Flanigan* v. *Gugenheim Smelting Co.,* 63 N. J. L. 647.

In the original bills it was alleged that the proceeding before the Prerogative Court was part of the "administrative" procedure, and that when the assessment had been sustained by that court the administrative procedure under the statute "was at an end" (*pars. 37 and 44*).

In the amended bills the somewhat inconsistent statement is added that the New Jersey Supreme Court is authorized, on certiorari, to review the facts as well as the law, to take additional testimony, and to affirm, reverse or modify the assessment, "thus rendering the action of that court administrative and not judicial"—but the allegation that when the assessment had been sustained by the Prerogative Court, the administrative procedure "was at an end" remains in the amended bills precisely as alleged in the original bills (*R. 11-12*).

We deny that the administrative procedure was at an end when the assessment had been sustained by the Prerogative Court, and say that the administrative procedure was at an end at the time the assessment had been finally fixed by the State Tax Commissioner.

But however that may be, we disagree with the allegation in the amended bills that the "action" of the New Jersey Supreme Court was administrative.

It is true that the New Jersey Supreme Court has power under section 11 of the Certiorari Act to "reverse or affirm, in whole or in part," a tax or assessment under review by certiorari (*1 Comp. Stats. of 1910, p. 406*). But that statute is merely declaratory of the inherent power of the Supreme Court as successor to the Court of King's Bench. The rule on the subject is summarized by his Honor, Judge Black (one of the former Justices of the New Jersey Supreme Court) in his authoritative work

entitled "Law of Taxation." We quote from the fourth edition (1935), section 279a, as follows:

> "It always has been one of the prerogatives of the Supreme Court, to supervise the proceedings and to correct the errors of all inferior tribunals, and of persons and bodies exercising particular legal functions, such, as, the assessment of property for taxation. The principal mode in which this power is put forth, is by the effective and comprehensive writ of *certiorari*.
>
> Such power cannot be transferred by legislation to the Court of Chancery, to review the action of taxing authorities and thereby destroy the right of review resting in the Supreme Court. The Supreme Court has exclusive jurisdiction" (p. 394).

With particular reference to the method of review of assessments under the Inheritance Tax Law, Judge Black summarizes the New Jersey decisions, as follows:

> "The legislature can not by the exercise of its power to create statutory agencies, as tribunals, to review the action of taxing authorities, destroy the right of review resting in the Supreme Court, in matters of taxation, by designating, as such agency, a court of superior jurisdiction, whose judgments or decrees rendered in the performance of its *ordinary judicial functions* are reviewable, only, by appeal to the Court of Errors and Appeals (italics ours).
>
> An appeal to the Court of Errors and Appeals will not lie from a decree of the Ordinary, setting aside *pro tanto* an assessment of a transfer tax, such decree being reviewable only in the Supreme Court, by *certiorari*, and then, an appeal may be taken from the judgment of the Supreme Court to the Court of Errors and Appeals.
>
> On an appeal from the comptroller's appraisement and assessment, his findings of fact will be set aside only, if the evidence be insufficient to sustain them or for other legal cause" (*Black's Law of Taxation, 4th ed., sec. 129h, p. 181*).

In *Jersey City* v. *Lembeck*, 31 N. J. E. 255, Beasley, *C. J.*, after referring to the constitutional provisions relating to the powers of the Court of Chancery and of the Supreme Court of the State of New Jersey, said:

> "Neither will it be gainsaid that it is, and always has been, one of the prerogatives of the supreme court of this state to supervise the proceedings and to correct the errors of all inferior tribunals, and of persons and bodies exercising particular legal functions; the practice is so fixed and the adjudications so clear upon the point, that it would be a mere waste of time to do more than state it as an *admission*. And the principal mode in which this power is put forth, is by the effective and comprehensive writ of *certiorari*. In the case under review, the officers, whose acts have been set aside, were employed in a matter which was, from first to last, of a purely legal nature. From the time of the first introduction of magistracy into this state, all through colonial and provincial times, up to within a very recent period, such a procedure as this has been carried on under the superintendency of the supreme court of this state, and if a person, in the situation of this complainant, had, at any time in all these years, conceived himself to have been wronged in point of law, by the doings of such officers, he would have applied to that court, which, in its discretion, would have commanded such doings to be certified to it, so that what was right in law, might be done. Such was the ancient and such has been the modern method of executing the law in such an affair, and there is, perhaps, no single attribute of the supreme court that is, and ever has been more peculiarly its own than this great power of supervision and regulation, and, to a certainty, if it can be shorn of this prerogative, then none of its prerogatives are secure. From these considerations, I am led to the conviction that, if this act is to bear the interpretation which must be put upon it in order to uphold this suit, then it should, on constitutional grounds, be declared by this court to be utterly nugatory" (p. 266).

In the case of *Roebling's Estate*, 91 N. J. Eq. 72, the question before the Court of Errors and Appeals was whether an appeal from the decree of the Prerogative Court authorizing such appeal from an assessment of transfer inheritance tax, could be taken direct to the Court of Errors and Appeals, or whether it should first be reviewed by the New Jersey Supreme Court; Gummere, *C. J.*, said:

> "The case before us involving, as it does, a matter of taxation, is reviewable by *certiorari* only, notwithstanding the fact that the legislative agency created for the purpose of a primary review of the action of the tax assessor is a *court of record* whose orders and decrees ordinarily are reviewable only by an appeal to this court" (p. 75) (*italics ours*).

In *Ettrick* v. *State Board of Tax Appeals*, 12 N. J. Misc. 432, Brogan, *C. J.* held that the action of the Board in refusing to accept petitions of appeal because they were alleged to be filed after the expiration of the statutory date therefor, was held reviewable by certiorari.

Thus, all the higher courts of New Jersey in opinions delivered by the Chief Justices of the Supreme Court during their respective terms of office, agree that under the Constitution of New Jersey the Supreme Court has exclusive jurisdiction of review of tax assessments (whether under inheritance tax or otherwise), and that such review does not depend upon the provisions of any statute but upon the constitutional power of that court.

While the court has the power to revise an assessment or tax it may, in its discretion, refuse to exercise that power, and remand the case to the assessing tribunal to correct the assessment. So held in *Town of Kearny* v. *State Board of Taxes and Assessment*, 103 N. J. L. 26, holding that the power of the court to fix the amount of an assessment was not "mandatory or obligatory"; thus showing that the court's power is not administrative.

(*d*)

An injunction, if granted as prayed, would violate section 265 of the Federal Judicial Code.

Section 265 provides:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

The question therefore arises whether the injunction which the plaintiffs seek, if granted, would stay proceedings "in any court of" the State of New Jersey.

It will be observed that the prohibition of Section 265 has three conditions:

1. The injunction must be in the form of a *stay.*
2. It must be against "proceedings."
3. The proceedings must be "in any court of a State."

The bills show that the plaintiffs took an appeal to the Ordinary pursuant to the foregoing provisions of the statute and that a decree of that court was entered on May 11, 1934, sustaining the assessment (*pars. 35 and 42 of bills*).

The bills further show that the executors obtained a review of that decree by writ of certiorari from the New Jersey Supreme Court, and that that court sustained the decree of the Prerogative Court, by its judgment of February 11, 1935 (*pars. 36 and 43 of bills*).

Each bill prays, among other things, that the defendants be enjoined "from in any way collecting or attempting to collect" the tax in question.

There can be no doubt that the first condition of the application of Section 265 appears on the face of the bills.

The second condition is that the injunction must be against "proceedings."

"Generally speaking, the term 'proceeding' means a prescribed course of action for enforcing a legal right, and hence it necessarily embraces the requisite steps by which judicial action is involved. It is a very comprehensive term." *Hyattsville Building Ass'n.* v. *Bolic,* 44 App. D. C. 408.

Thus it has been held that levy and sale under execution issued by a judgment in a state court is a proceeding within the meaning of the section. *Ruggles* v. *Simonton,* 20 Fed. Cas. No. 12,120; *American Ass'n.* v. *Hurst,* 59 Fed. 1; *Leathe* v. *Thomas,* 97 Fed. 136.

At pages 18, 22, 26, 27, 29 and 48 of the appellants' brief, it is argued that there is now no proceeding pending in any court of New Jersey for the collection of the tax, and that the tax cannot be collected without the institution of a "new and independent action" (*p. 48*).

After the judgment of the State Supreme Court, the case was remanded to the Prerogative Court for further proceedings on its final decree.

The taxes remaining unpaid, Section 21 of the act imposed the duty upon the State Tax Commissioner (the statute says he *shall*) to report the fact to the register of the Prerogative Court, whereupon it is his duty (the statute says he *shall*) to issue a citation to the persons interested to appear before the court to show cause why the tax should not be paid. Section 22 directs the Attorney General to (the statute says he *shall*) prosecute the "proceeding" before the court.

These are the only state officers (and the only duties) prescribed or required by law in such circumstances, and the duties are mandatory. Such action is the only action that can possibly be restrained by an injunction. That is all the appellants seeks to enjoin.

The "proceeding" prescribed by (and so denominated in) Sections 21 and 22 of the act, is not a new, distinct, or separate proceedings, or an independent action.

It is an essential step in the assertion of the power of the Prerogative Court to issue proper process to enforce its decree. Such jurisdiction continues until the decree has been satisfied. This becomes plain from a brief consideration of the origin, nature and process of that court.

It was the ancient prerogative of the bishop of the diocese to administer the estates of decedents therein. This was done in the Prerogative Court of which the bishop (or "ordinary") was judge. *2 Blackstone's Com. 509-10; 3 Idem., 66.*

That court was transplanted in the Colony of New Jersey by Queen Anne's instructions (November 16, 1702) and commission (December 5, 1702) to Lord Cornbury, the first Royal Governor after the surrender of the proprietary government. *Leaming & Spicer's "Grants and Concessions"* (*Instructions*) *pp. 638-9,* (*Commission*) *pp. 650, 651, 652,* and continued down to the American Revolution, and was adopted by the State Constitution of July 2, 1776, which vested that jurisdiction in the governor as chancellor and ordinary. *Arts. VIII, XXII, 5 Thorpe's Am. Charters, pp. 2596, 2598. In Re Coursen's Will, 4 N. J. E. 408, 412, 415; In Re Hodnett, 66 N. J. E. 329, 337-8.*

When the powers of government were separated by the Constitution of 1844, the office and jurisdiction of the ordinary and judge of the Prerogative Court were vested in the chancellor, where they still remain. *Dickinson's Probate Court Practice* (*1884*) *pp. 2-5.*

From 1844 onward to and including the present time, the State Constitution has provided:

> "The judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore; a court for the trial of impeach-

ments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require."

Art. VI, Sec. I, pgf. 1.

"The chancellor shall be the ordinary or surrogate general, and judge of the prerogative court."

Art. VI, Sec. IV, pgf. 2.

5 Thorpe's Am. Charters, 2608, 2609.

The Constitution of 1776 provided "That the common law of England, as well as so much of the statute law, as have been heretofore practiced in this colony, shall still remain in force, until they shall be altered by a future law of the legislature; * * *" (*Art. XXII*). Like provision has been carried through to the present constitution (*Art. X*) *5 Thorpe's Am. Charters, pp. 2598, 2613.*

By the above inclusion of the Prerogative Court as part of the judicial system of the state, that tribunal became a judicial tribunal, as well as a constitutional court, which could not be altered or abolished except by alteration or amendment of the Constitution. There was nothing to prevent the legislature from extending its jurisdiction to additional subjects, but the legislature could not deprive the decrees of that court of their quality of being conclusive. *Harris* v. *Vanderveer's Executor* (Court of Errors and Appeals), 21 N. J. Eq. 424, 427-8.

The jurisdiction of the Prerogative Court, both in England and in the Colony and State of New Jersey, including its appellate jurisdiction, is discussed in *Dickinson's Probate Court Practice, pp. 7-10, 11-12.*

Adhering to its common law forms and procedure, and regarding succession taxes as kindred to the succession of prosperity, the legislature of New Jersey, from the

enactment of the first succession tax act in 1909 (*N. J. P. L. 1909, Ch. 228, sec. 18, p. 334*), has consistently provided the right of appeal from the appraisement or assessment, to the Ordinary, as the judge of the Prerogative Court, and has conferred upon him "jurisdiction to hear and determine all questions" (*ibid. p. 335*) in the same manner as he has jurisdiction to hear and determine all questions relating to other matters within his appellate jurisdiction.

In New Jersey, as in England, the Prerogative Court has always had the quality of a court of equity, and the rules of equity practice were followed in its procedure. *Bugbee* v. *Van Cleve*, 99 N. J. Eq. 825, 833.

Except for a few special writs (none of which are applicable here), courts following equity procedure were without power to enforce their decrees except by citation for contempt. *2 Daniell's Chy. Pl. & Pr. (Perkins Am. Ed.) 1054 et seq.* For that reason section 21 of the inheritance tax act provides for a citation to bring the parties before the Ordinary to show cause why such tax should not be paid in accordance with its decree. The common law procedure on such a citation was to punish for contempt. Declaratory of that procedure the legislature, in 1900, enacted a law respecting the Prerogative Court, and the power and authority of the Ordinary; section 7 of which reads as follows:

> "7. If any person shall neglect or refuse to obey any citation, or to perform any sentence or decree of the ordinary or judge of the prerogative court, it shall be lawful for such ordinary and such court to cause such person or persons, by process directed to any sheriff of any county of this state, to be taken and imprisoned until he shall obey the said citation, or perform the said sentence or decree; and every sheriff is hereby directed to cause all such process, to him at any time directed, to be duly executed, and to confine the person against whom such process shall be issued, as in execution, until he shall be

> delivered by due course of law; and if any sheriff shall neglect his duty therein, he shall be answerable to the party aggrieved in such manner as he would be answerable upon process of a like nature issuing out of the supreme court." (*N. J. P. L. 1900, Ch. 148, p. 347.*)

In the transfer inheritance tax act of 1909 (now sec. 21) the legislature directed that proceedings on such citation shall conform to the practice prevailing in the Prerogative Court, and added, that the decree of the court thereon shall, upon request of the State Tax Commissioner, be docketed and filed by the Clerk of the Supreme Court, or by the County Clerk of any county, with the effect of a judgment lien upon the property of the estate, and that execution be issued thereon, in accordance with the rules and practice appertaining to judgments of other courts docketed therein, and, particularly, with the practice of docketing in the Supreme Court clerk's office of decrees of the New Jersey Court of Chancery (*N. J. P. L. 1902, p. 524*).

Thenceforward, collection is pursued as prescribed for civil judgments, in "An Act respecting executions" (*N. J. Revision 1877, pp. 389, et seq.; 2 N. J. Comp. Stat. pp. 2243, et seq.*)

Since the only proceeding which the statute prescribes for enforcing the court's decree is that described in sections 21 and 22, the injunction (either preliminary or final) sought by appellant, if granted by the court, could, in effect, do nothing but enjoin the procurement of the citation as a process to enforce obedience to the final decree of the court. The jurisdiction of the court continues, and the matter is still a proceeding in that court until the decree is satisfied. *Ruggles* v. *Simonton,* 20 Fed. Cas. No. 12,120; *Am. Ass'n* v. *Hurst,* 59 Fed. 1; *Leathe* v. *Thomas,* 97 Fed. 136; *Ke-Sun Oil Co.* v. *Hamilton,* 61 Fed. (2d) 215, 218.

The third condition that brings Section 265 into operation is that the proceedings are to be "in any court of a State." But however that may be, there can be no doubt that the hearing before the New Jersey Prerogative Court was a *proceeding in a court*—in fact, it is so described in the bills (*pars. 35, 36, 37 and 42, 43 and 44*).

It is true that the bills assume that the proceeding in the Prerogative Court was a part of the *administrative* procedure under the New Jersey statute (*pars. 37 and 44*). While we do not agree that such procedure is administrative, that question is not important insofar as the present case is concerned, as admittedly the decree of the Prerogative Court was reviewed in and sustained by the New Jersey Supreme Court—which the District Court held is *not* a part of the administrative procedure.

The bills ask for an injunction to restrain the enforcement of the decree of the Prerogative Court by proceedings in aid of execution.

In *Ke-Sun Oil Co.* v. *Hamilton,* 61 Fed. (2d) 215, the Circuit Court of Appeals of the 9th Circuit considered the jurisdiction of the court under Section 265 of the Judicial Code and reviewed the subject at length. The question there was whether the District Court could enjoin the prosecution of judgments on execution.

After reviewing the cases the court held that the power to enter judgment includes the power to issue all proper process to enforce its payment, and that the jurisdiction of the court over the controversy and over the parties, acquired in the primary case by service of process, continued until the judgment is satisfied.

As stated in the *Bouic* case, *supra,* "Proceedings means a prescribed course of action for enforcing a legal right."

We submit that the undisputed facts bring the suits within Section 265.

The District Court so held, saying:

> "It is intimated that because the Supreme Court of New Jersey had come to a judgment, the proceedings in that court similarly had come to an end, leaving the executors free to seek relief where they chose, whether by appeal to the New Jersey Court of Appeals or by suit in the United States District Court. But we are constrained to hold that, having passed by the ending of the administrative proceedings in respect to the tax and having thereafter entered a state judicial tribunal, the executors must abide the consequences, one of which is that proceedings in the state courts were not ended by the judgment of the Supreme Court. The prohibition of Section 265 of the Judicial Code denying the right of any court of the United States to stay proceedings in any court of a state is not limited to proceedings in a court of a state 'up to and including final judgment, but (extends) to the entire proceedings from the commencement of the suit until the execution issued on the judgment or decree is satisfied.' Leathe *vs.* Thomas, 97 Fed. 136, 138; Wayman *vs.* Southard, 10 Wheat. 1, 22. What may happen in consequence of the decision by the Supreme Court of New Jersey remains to be seen. The executors may appeal to the New Jersey Court of Errors and Appeals or the State may proceed to collect the tax validated by the New Jersey Supreme Court decision. The latter, in this state of the case, is not subject to interference by a federal district court; the former constitutes a remedy at law with admittance finally to the Supreme Court of the United States if a valid constitutional question is involved" (*R. 228, 9*).

(*e*)

The suits are in fact against the State of New Jersey.

The discussion under (d) brings us to the next question, namely, whether these suits are not in fact against the State of New Jersey.

In both suits it is alleged that all the defendants are citizens of the United States and residents of the State of New Jersey (*R. 3 and 494*).

In both suits the plaintiffs allege the official positions of each defendant; and the defendants admit these allegations, but point out in detail the duties of each defendant under the Transfer Inheritance Tax (*R. 36 and 510*).

Both bills allege that the defendants are "clothed" under the laws of New Jersey with duties in the assessment and collection of inheritance taxes (*R. 3 and 494*).

In the suit by Elinor Dorrance Hill it is alleged that the plaintiff is a citizen of the United States and a resident of the State of Rhode Island (*R. 3*).

In the suit by the executors it is alleged that Camden Safe Deposit & Trust Company (one of the executors) is a corporation organized under the laws of New Jersey; and that the individual plaintiffs are "citizens and residents of the United States." There is no allegation of *state* citizenship or residence of any of the individual plaintiffs (*R. 493, 4*).

However, the petition for probate, signed and sworn to by each of them, states that they are all residents of New Jersey, except George Morris Dorrance, M. D., who is a resident of Philadelphia, Pa. (*R. 29, 130*), and their residences are so stated in the order of probate under which they exercise their powers as executors—the capacity in which they appear in this suit (*R. 131, 2*).

Each bill prays for an injunction against the several defendants and their deputies "acting under and by virtue of their authority."

There is no pretense that the defendants have any individual interest in the collection of the taxes; their sole interest is as officers of the State of New Jersey, who are charged under the statute with certain duties relating

to the collection of the tax in question, which, when paid, goes into the Treasury of the State of New Jersey.

The various acts which the plaintiffs say the defendants are threatening are admittedly *only* such acts as fall within the line of their respective duties under the statute.

When an officer of the State attempts to enforce an unconstitutional statute, or to enforce a constitutional statute by an unconstitutional method, such officer is considered to be a private wrongdoer, and a suit against him, individually, to restrain such action is not a suit against the State, but against the individual.

But here, the constitutionality of the statute prescribing how the taxes are to be levied is not questioned; the defendants are not wrongdoers, as they would be if there was any claim that the statute itself was unconstitutional, or that the method of enforcing it was unconstitutional.

When an officer acts in the execution of a clear statutory duty, in which no administrative or discretionary power exists, he cannot be said to be engaging in a wrongful act.

There is no legal authority for suits against a state by citizens thereof without the consent of the state.

In *Fitts* v. *McGhee*, 172 U. S. 516, 43 L. Ed. 535, the court said:

> "But it has been adjudged by this court upon full consideration that a suit against a state by one of its own citizens, the state not having consented to be sued, was unknown to and forbidden by law, as much so as suits against a state by citizens * * * or subjects of foreign states."

So far as relates to a suit by a citizen of another state, such a suit is forbidden by the Eleventh Amendment.

There are two lines of decisions on the question whether a suit against state officers is in fact against the state;

one is illustrated by *Ex parte Young*, 209 U. S. 123, and *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20, which were followed in *Greene* v. *Louisville and I. R. Co.*, 244 U. S. 499. The other line is illustrated by *Re Ayres*, 123 U. S. 443, and *Missouri, K., T. & R. Co.* v. *Hickman*, 183 U. S. 53.

In the first line the suits were brought to enjoin the enforcement or execution of some act of a state officer performed within his administrative powers in which his personal conduct was alleged to be illegal. Many of those cases were to restrain the enforcement of administrative orders in which the state had no financial interest. In the other line of cases state officers acted under a statutory duty in the name and for the benefit of the state, and for the purpose of collecting revenues which belonged to the state and in which the state officers had no pecuniary or personal interest. In the *Hickman case, supra*, at page 59, the opinion of the court states:

> "* * *, it may fairly be held that the state is such real party when the relief sought is that which inures to it alone and in its favor the judgment or decree, if for the plaintiff, will effectively operate."

It is submitted that both suits are in fact brought against the State of New Jersey.

Plaintiffs do not claim that the statutes under which the taxes in question have been assessed are unconstitutional; the defendants are not charged with any attempt to exercise powers contrary to, or in excess of, those conferred by law; on the contrary, the complaints show that their acts are in accordance with, and as required by, the statutes of New Jersey.

After the assessment of the Tax Commissioner has been sustained by the Prerogative Court and by the New Jersey Supreme Court, how can an attempt by the officers of the State of New Jersey to collect the tax, in accord-

ance with the duties imposed upon them by a constitutional statute, be regarded as a personal wrongful act? The officers are bound by the adjudication that the assessment is valid, and it is their official duty to collect the amounts of tax levied thereon.

The result is that either the present suits are in fact against the State of New Jersey, in which event they are barred, or they are an attempt to stay "proceedings" in violation of section 265.

II.

The judgment of the Supreme Court of the State of New Jersey is res judicata.

The District Court, after reviewing the history of the assessment and of the litigation arising therefrom, pointed out that on the question of jurisdiction there is "no dispute of fact, that is, no dispute as to what has happened. The question of jurisdiction centers in the legal character of the things that have been done and in their legal consequences as they affect the plaintiffs' right to ask for and the power of this court to grant the relief for which they pray" (*R. 226*).

The District Court then continued (italics ours):

> "The theory underlying federal jurisdiction in such cases is that the administrative proceedings of the state in laying the tax must have been completed before the aggrieved taxpayer can call upon a federal court for relief. At that particular point, that is, before anything else shall have been done to correct or annul the assessment, the taxpayer may seek relief in a federal district court under the cited provision of the Judicial Code if an appropriate constitutional question is involved and other jurisdictional requisites are present. But the theory underlying federal jurisdiction in such case goes a step further and is to the effect that if the aggrieved taxpayer should pass the point at

> which administrative proceedings end and should take an appeal or otherwise seek relief in a state court whose jurisdiction of the matter is judicial, then he is bound to the tribunal of his choice and *bound by its decision which, if error, is subject to correction only by the orderly method of appeal.* In such case a shift in the midst of judicial proceedings from a state court to a federal court, by institution of suit in the latter for equitable relief, would, perhaps, be met by a plea of res judicata, and if the federal suit should operate as a stay of proceedings in the state court it is forbidden by federal law (Judicial Code, Section 265)." (*R. 226, 7*).

The general principles as to the doctrine of *res judicata* are well-settled. They have recently been stated by this court as follows:

> "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause." *Baldwin* v. *Iowa State Traveling Men's Asso.*, 283 U. S. 522, 75 L. Ed. 1244.

As to litigation involving taxes, this court said in *Tait* v. *Western Maryland Railway Company*, 289 U. S. 620:

> "This court has repeatedly applied the doctrine of *res judicata* in actions concerning state taxes, holding the parties concluded in a suit for one year's tax as to the right or question adjudicated by a former judgment respecting the tax of an earlier year. *New Orleans* v. *Citizens' Bank*, 167 U. S. 371, 42 L. ed. 202, 17 S. Ct. 905; *Third Nat. Bank* v. *Stone*, 174 U. S. 432, 43 L. ed. 1035, 19 S. Ct. 759; *Baldwin* v. *Maryland*, 179 U. S. 220, 45 L. ed. 160, 21 S. Ct. 105; *Deposit Bank* v. *Frankfort*, 191 U. S. 499, 48 L. Ed. 276, 24 S. Ct. 154. Compare

United States v. *Stone & D. Co.*, 274 U. S. 225, 230, 231, 71 L. ed. 1013, 1024, 1025, 47 S. Ct. 616. The public policy upon which the rule is founded has been said to apply with equal force to the sovereign's demand and the claims of private citizens. Alteration of the law in this respect is a matter for the law-making body rather than *the courts. New Orleans* v. *Citizens' Bank*, 167 U. S. 398, 399, 42 L. ed. 211, 212, 17 S. Ct. 905. It cannot be supposed that Congress was oblivious of the scope of the doctrine, and in the absence of a clear declaration of such purpose, we will not infer from the annual nature of the exaction an intent to abolish the rule in this class of cases" (p. 624).

See, further:

State Corporation Commission v. *Wichita Gas Company*, 290 U. S. 561;

Nachod Co. v. *Helvering*, 74 Fed. (2d) 164;

Catholic Society, etc. v. *Madison County*, 74 Fed. (2d) 848;

Henderson v. *United States Radiator Corporation*, 78 Fed. (2d) 674;

Grubb v. *Public Utilities Commission*, 281 U. S. 470;

American Surety Co. v. *Baldwin*, 287 U. S. 156.

The general principles are summarized in 34 C. J. 742, 24 A. & E. Encycl. of Laws, p. 709.

The record in the present cases shows that there have been three separate adjudications by New Jersey courts on the fundamental question of the domicil of the testator, and two of these adjudications also passed on the questions which the plaintiffs now seek to raise by their bills of complaint.

Surrogate's Court of Burlington County.

The first proceeding was in the Surrogate's Court of Burlington County, New Jersey; that court admitted the will to probate and granted letters testamentary thereon; obviously no such order could be made except on a finding that the domicil of the decedent was in Burlington County, New Jersey.

In that court the executors filed their duly verified petition for the probate of the will, giving notice to all parties interested, including the plaintiff in suit No. 193.

The jurisdiction of the Surrogate's Court, with reference to the probate of wills, is as follows:

> "The surrogates of the several counties of this state shall take depositions to wills and admit the same to probate, and grant letters testamentary thereon; but in case doubts arise on the face of the will, or a caveat is put in against proving a will, or a dispute arises respecting the existence of a will, the surrogate shall not act in the premises, but shall issue citations to all persons concerned to appear in the orphans' court of the same county, which court shall hear and determine the matters in controversy.
>
> The application for the probate of the will of any person who was resident in this state at his decease, and for letters testamentary thereon, under the preceding section, shall be made to the surrogate of the county in which the testator resided at the time of his death" (*N. J. Laws of 1898, p. 718, secs. 13, 14; 3 Comp. Stats. of 1910, pp. 3816, 7*).

It will be noted that application for probate is made to the surrogate of the county in which the testator *resided* at the time of death; the statute presupposes that the testator was "resident" in New Jersey at his decease.

Pursuant to these provisions, the executors, on October 1, 1930, filed with the Surrogate of Burlington County, New Jersey, their petition for the probate of the

will, signed and sworn to by all of the executors, wherein they "respectfully showeth that they are the executors * * *. That said John T. Dorrance departed this life at his residence in Cinnaminson Twp. in the County of Burlington and State of New Jersey, on Sunday the 21st day of September A. D. 1930, * * * " (*R. 129-132*).

An order was made in the "Burlington County Surrogate's Court," on October 2, 1930, reciting the said application, and further reciting that the surrogate has inquired into the circumstances and taken proof, etc. and adjudging that the instrument offered for probate is the last will, etc., of the decedent, "and the same is hereby admitted to probate" and it is ordered that letters testamentary may be issued thereon to the executors, etc. (*R. 132*).

The parties to the petition for probate are the same as the parties plaintiff in suit No. 194; and the party plaintiff in suit No. 193 is named as a "daughter" of the decedent in the petition for probate.

The said order for probate necessarily adjudicated that the decedent was a resident of Burlington County, New Jersey; as otherwise, under the quoted provisions of the statute, the will could not have been lawfully probated in Burlington County.

Following the admission of the will to probate and the qualification of the executors thereunder, proceedings were taken before the officials of the State of New Jersey, for the purpose of determining the amount of the inheritance tax under the New Jersey statute. The original proceedings were before the State Comptroller, whose duties in that respect were taken over by the State Tax Commissioner pursuant to Chapter 336, New Jersey Laws of 1931, effective July 1, 1931.

After a hearing as provided by the statute, the Comptroller, on May 13, 1931, made the following finding of fact:

> "After a careful consideration of all available data, including oral statements submitted by you (Hon. William D. Lippincott, Proctor for the executors) during your recent appearance, the Department has concluded that the legal domicile of the decedent at the date of his death and for many years prior thereto was Cinnaminson, Burlington County, New Jersey" (*R. 467*).

Following that adjudication by the Comptroller, the amount of the assessment and the tax thereon were determined, first on October 17, 1931; and, after a further hearing, on October 10, 1932 (*R. 469, 475*).

New Jersey Prerogative Court.

From the assessment as finally determined by the Tax Commissioner, the executors appealed to the Ordinary, as provided by section 18 of the New Jersey statute; the parties to that appeal were the executors as petitioners, and the defendant Martin, as Tax Commissioner, respondent.

In that court the issues are set forth in the petition of appeal (*R. 65-73*), and the answer thereto (*R. 73-81*).

In the New Jersey Prerogative Court the same questions of fact and of law were raised as the plaintiffs now allege in the present suits (also some minor questions relating to the amount of the assessment and the appropriate deductions therefrom which are immaterial to the present issues).

So far as pertinent, the issues raised in the Prerogative Court were:

1. The domicil of the decedent.
2. The full faith and credit clause.
3. The due process clause.

(*Par. 13 of Petition; R. 69, 70; Par. 10 of Answer; R. 74*).

The Prerogative Court held that New Jersey had "the sole right" to levy inheritance tax upon the intangible personal estate (*R. 93*); and final decree was entered in said court accordingly, affirming the assessment except as to certain contingent estates, the assessments upon which were vacated without prejudice (*R. 98-100*).

New Jersey Supreme Court.

But the plaintiffs claim that the statutory appeal to the Ordinary (i. e., the Prerogative Court), is merely another step in the administrative procedure whereby the amount of tax is finally determined. The District Court found that it was not necessary to pass upon this point, saying: "Whether the jurisdicton of that Court (Prerogative) is administrative as the executors contend is debatable. We could, conceivably, be persuaded under New Jersey authorities that its jurisdiction is judicial. However, as the matter is not dispositive of the case, we shall assume, without deciding, that its jurisdiction in respect to tax matters is administrative" (*R. 227*).

So, likewise, in this court it is unnecessary to determine whether the proceeding in the New Jersey Prerogative Court is administrative or judicial, as the executors proceeded to review the decree of the Prerogative Court in the New Jersey Supreme Court; and if the proceeding in the latter court is judicial, then its judgment is *res judicata* upon all matters in issue, or necessarily involved, in the judgment of that court—provided, of course, the liti-

gation in that court was between the same parties or their privies.

Looking then at the issues raised in the New Jersey Supreme Court, we find that the executors as the prosecutors of the writ of certiorari again raise precisely the same issues as they had previously raised in the Prerogative Court and as they now seek to raise in the present suit, to wit:

1. The domicil of the decedent.
2. The full faith and credit clause.
3. The due process clause.

Under the practice in New Jersey the Reasons on certiorari constitute the pleadings in the New Jersey Supreme Court. By those pleadings the executors alleged:

1. That decedent was not domiciled in New Jersey, but in Pennsylvania. (See *Reasons 1 to 10; 13 to 18; R. 101-103*).

2. That the judgment of the Pennsylvania Supreme Court as to the domicil of the decedent was binding upon the courts of New Jersey and its Tax Commissioner, under the full faith and credit clause. (*Reasons 11, 12; R. 102; Reasons 23-26; R. 104, 5*).

3. That the New Jersey statute and the assessment thereunder, violated the due process clause. (*Reasons 19-22; 25, 26; R. 103-5*).

The New Jersey Supreme Court, in its opinion, said:

> "We have carefully studied and considered the voluminous records, proofs and briefs herein submitted. The opinions of Buchanan, Vice-Ordinary, in this matter when it came up before him for determination are reported in 115 N. J. Eq. 268, and 116 *Id.* 204. They disclose a very careful analysis and consideration of the proofs as well as

the law applicable thereto; they are comprehensive, clear, sound and correct.

We are of the firm opinion that there has been nothing further presented to this court which would merit or justify a disturbance of the results reached by the learned Vice-Ordinary and with which we are in thorough accord" (*R. 155*).

The judgment of the Supreme Court was entered accordingly, affirming the assessment as corrected by the decree of the Prerogative Court (*R. 156, 7*).

The executors may take an appeal from this judgment to the New Jersey Court of Errors and Appeals, but they have not seen fit to do so; up to the present time they have acquiesced therein; in the absence of such appeal we submit that the doctrine of *res judicata* is a complete answer to the present bills.

We submit, further, that the doctrine applies not only to the suit of the executors (No. 194), but also to the suit of the individual beneficiary (No. 193); she is in privity with the executors who have represented her throughout the proceedings, both in the Surrogate's Court, in the New Jersey Prerogative Court, and in the New Jersey Supreme Court; at the date of her father's death she was of age and could have asserted her individual rights, if they in any way differed from those of the executors.

The appellants argue that the judgment of the New Jersey Supreme Court is not *res judicata*, because, they say, "it has not been acquiesced in by the executors" (*Appellants' Brief, pp. 23, 66*). In this connection the appellants further say that they have "signified their intention" of taking an appeal from the judgment of the Supreme Court within the time allowed by law (*Appellants' Brief, p. 78*).

The simple fact, however, is that it is not the practice in New Jersey to take an appeal merely by signifying an

intention to do so. The procedure on appeal is very simple; the mere filing of a notice, either accompanied by or followed by, a statement of the grounds of appeal is all that is required under the New Jersey procedure. But thus far the appellants have refrained from exercising their right of appeal to the New Jersey Court of Errors and Appeals; the judgment of the Supreme Court is final *until and unless* it is reversed by the higher court, and until and unless they appeal, they acquiesce in the judgment.

These rules are so elementary that it seems almost superfluous to mention them; we do so only because of the constant reiteration by appellants of the argument that the New Jersey Supreme Court is not the highest court of New Jersey, and of their assumption in their argument on this point that an *intention* to take an appeal has the same effect as if the appeal had, in fact, been taken.

III.

Section 266 of the Judicial Code does not apply to this case.

An interlocutory injunction, if granted in accordance with the prayer of the complaint, by a statutory court of three judges, is not authorized by Section 266 of the Judicial Code (U. S. C. Title 28, Sec. 380) because this suit is not brought to suspend or restrain the enforcement, operation or execution of any statute of the State of New Jersey by restraining the action of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State.

This court has jurisdiction, under Section 266, to entertain this appeal direct from said statutory court, con-

vened under that section, *if* the statutory court had jurisdiction.

If the judgment of the New Jersey Supreme Court was that of a judicial tribunal, and the statutory court lacked jurisdiction to grant an injunction because the suit was brought to stay a proceeding in a court of the State of New Jersey, in violation of Section 265, then the suit was not cognizable by the statutory court under Section 266 and appeal does not lie direct to this court. *City Bank Farmers Trust Co.* v. *Schnader,* 291 U. S. 24.

IV.

Appellants have not shown any irreparable injury or other grounds of equity jurisdiction.

If all other of the appellants' claims were admitted, they would not be entitled to an injunction unless irreparable injury was shown; unless they were threatened with danger from which they could not defend themselves other than by the extraordinary remedy of injunction.

In support of their claim that Section 265 of the Judicial Code does not apply in this case, appellants say "No action is now pending in New Jersey which an injunction would stay" (*Brief, p. 22*).

Statements to the same effect also appear at pages 18, 26, 27, 33 and 48 of the brief.

If the only method of collecting the tax is by an action against the executors personally, or an independent proceedings in the Prerogative Court, as claimed at pages 27 and 48, such proceedings cannot be instituted without notice and a hearing and no threat of irreparable injury impends. In such case, Section 265 of the Judicial Code might not apply, but appellants could not obtain an injunction because no irreparable injury appeared.

Taking them at their word, they are not now entitled to an injunction. But while we agree that no irreparable injury is shown, we insist that the appellants seek to enjoin a proceeding in a state court.

The admitted facts do not justify a claim of irreparable injury. In the first place, the appellants admit that they have an absolute right of appeal to the Court of Errors and Appeals; and they state they will take such appeal unless "this action in the United States District Court renders such an appeal unnecessary" (*R. 31*).

If the decision of the Court of Errors and Appeals is adverse they may still apply to this Court for further review.

Under such circumstances, the constitutional rights of the appellants are protected, and they have an adequate remedy available, in the state courts. Having pursued their remedy in the state courts to the entry of a final judgment, that judgment is *res judicata* here. *Grubb* v. *Public Utilities Commission,* 281 U. S. 470, 476-7, 479; *American Surety Co.* v. *Baldwin,* 287 U. S. 156, 165, 167, 169; *Missouri* v. *Fiske,* 290 U. S. 18, 29.

At page 20 of appellants' brief it is stated that the appellees have a technical right to insist upon the filing of a bond in an amount exceeding $24,000,000.00. That statement is not entirely candid.

The brief fails to mention that the $12,000,000 worth of securities was pledged under a voluntary agreement, and that other voluntary agreements for such purpose have been made.

Two of these agreements are set forth in the answers and are identified as Exhibits 12 and 13 in the affidavit of Mr. Kelly, State Supervisor of the Inheritance Tax Division.

His affidavit describes in detail the circumstances under which these agreements were made, and states the sub-

stance of each agreement. The facts as set forth by him were not denied or in any way questioned. We quote therefrom:

"Deponent further says that in the matter of the matured State bonds mentioned in said paragraphs, the State Tax Department did issue waivers on condition that other securities be pledged as alleged, and the executors entered into a voluntary agreement, in writing, with said State Tax Commissioner for that purpose, a true copy of which agreement is attached hereto as Exhibit 12. Said agreement provides that the substituted securities are to be registered in the names of the executors and held by the Camden Safe Deposit and Trust Company, one of the executors, under the joint control of it and the State Tax Commissioner, and the executors receive the interest on said bonds as it accrues. Respecting the third division of said paragraphs and affidavits, respectively, alleging that on June 26, 1934, in order to avoid the posting of a bond of upwards of $24,000,000, the executors placed in escrow securities with an appraised value of $12,360,000; deponent says that under the practice of the courts of New Jersey one who seeks to review a judgment by writ of certiorari, may be required to give bond or security in such amount as may be approved by the Court. On the application by the executors to the New Jersey Supreme Court for the writ of certiorari the court imposed a condition for the issuance of the writ, that plaintiffs furnish security either in the form of a bond or a deposit of adequate securities to secure the amount of the judgment. The Executors chose the second alternative and voluntarily offered to deposit said shares of stock, and voluntarily entered into an agreement with the State Tax Commissioner for that purpose. A copy of that agreement is attached hereto as Exhibit 13. It provides that such securities shall be delivered, without change in registration, to, and be held by, Camden Safe Deposit Trust Company, one of the executors, in escrow, under the joint control of it and the State Tax Commissioner. The Executors

are free to receive the dividends accruing on said securities and are not otherwise hampered in their ownership thereof. * * *

Deponent further says that if and when the Executors are free, and desire, to sell, pledge, transfer or otherwise utilize the bonds or stocks mentioned in paragraph 34 of this affidavit, or any other personal property of the estate, they may do so by giving bond or other security for the payment of the judgment for taxes or by substituting other satisfactory securities. In the present instance, the only security which said Executors have given for, or that is required pending the litigation of these taxes, is the deposit of said bonds and stock in escrow under the terms of said agreements (Exs. 12 and 13), and they are not by that arrangement deprived of any of the benefits or proceeds thereof, and at the same time they are relieved from giving bond, or paying premiums on a bond or other forms of security" (*R. 121, 2*).

At page 18 of appellants' brief it is stated that additional personal property appraised at more than $67,000,000.00 "was also tied up because the State Tax Commissioner and the State Supervisor of the Inheritance Tax Bureau refused to issue waivers permitting the property to be transferred."

At page 19 of appellants' brief it is alleged as a basis for injunctive relief, that the proper administration of the estate is impossible, because of the pendency of this tax appeal (*par. 6*); that the executors are compelled to maintain large cash reserves at a low rate of interest because of the threatened collection (*par. 7*), and that the tax claimed is alleged to constitute a lien on all the property of the decedent's estate and constitutes a cloud on the title thereof (*par. 9*).

Waiver of the tax lien is provided for in section 12 of the act (*p. 119 of Appellants' Brief*), by consent, in writing, of the State Tax Commissioner.

On July 24, 1935 (after this record was completed) the executors of decedent made their first application for a waiver of this tax lien, and that application was granted in the form of an agreement of that date, signed by all of the executors and by the State Tax Commissioner.

If the plaintiffs are fearful that the State of New Jersey will not keep its agreement, they may pay the disputed tax under protest; and if they finally succeed in the litigation, the executors then have the right to recover back the amount erroneously paid. Provision for such refund is made by Transfer Inheritance Tax; Sections 15 and 24 thereof read as follows:

> Sec. 15: "When any amount of said tax shall have been paid erroneously to the State Tax Commissioner, it shall be lawful for the Comptroller of the Treasury on satisfactory proof rendered to State Tax Commissioner of such erroneous payments, and duly certified by him to the comptroller, to draw his warrant on the State Treasurer, in favor of the executor, administrator, person or persons who have paid any such tax in error, or who may be lawfully entitled to receive the same, for the amount of such tax so paid in error; *provided*, that all such applications for the repayment of such tax shall be made within two years from the date of such payment" (*Ex. 8, p. 20*).
>
> Sec. 24: "All amounts becoming due under the provisions of this act shall be paid from the same fund provided in the annual appropriation bill for the payment of refunds to estates pursuant to section fifteen, chapter two hundred and twenty-eight, laws of one thousand nine hundred and nine, as amended * * *" (*Ex. 8, pp. 23, 24*).

It is the established practice of the legislature to make a blanket appropriation each year for the refund of the inheritance taxes that have been erroneously paid; an illustration of such statutory provision is in the Appropriation Act for the year 1934, which provides as follows:

> "Upon approval of the State Tax Commissioner, the Comptroller of the Treasury is hereby author-

> ized and it shall be his duty, to withdraw from the state fund such amounts as shall be required to carry out the provisions of Chapter 238, Laws of 1909, and to refund and pay such claims as may be necessary and the State Treasurer shall pay same upon the warrants of said Comptroller, and there is hereby appropriated an amount necessary therefor." (*N. J. P. L. 1934, p. 580*).
>
> To same effect, see *N. J. P. L. 1935, p. 655.*

Plaintiffs claim that they are not obliged to rely upon the grace of the legislature to refund an erroneous tax. The answer is that the New Jersey Supreme Court has the power to review an arbitrary refusal of state officers to exercise their authority, as prescribed by the statute, in the refund of taxes.

If the taxes are paid under protest, such payment does not prevent the review of the legality thereof. In *Miller* v. *Edward*, 85 N. J. L. 517, the New Jersey Supreme Court said:

> "Neither have we any doubt of the right of the prosecutor to contest by *certiorari* the legality of this assessment, and to have it set aside, although the tax assessed was paid under protest. Such an assessment is analogous to a judgment, and when set aside the prosecutor is restored as near as may be to his original position. This is not a proceeding to recover a voluntary payment of taxes, but to set aside a judgment which required the prosecutor to pay, and his submission to such judgment does not take from him the right to assail its legality. If the judgment be set aside, common honesty demands that he be restored that which was unlawfully exacted under a judgment which had no legal foundation. *Mayor of Jersey City* v. *Riker*, 9 Vroom 225; *Elizabeth* v. *Hill*, 10 *Id.* 555."

So far as the New Jersey courts are concerned, their policy, in the language of the *Miller* case, is "common honesty." This is further illustrated by the case of

Singer Sewing Machine Co. v. *State Board of Assessors*, 54 N. J. L. 90. There the state made a motion to require the prosecutor, on a certiorari to review the tax, to pay the tax as a condition of further prosecution of the writ.

The writ had been allowed by a justice to review the tax on the condition that the prosecutor pay the tax pending the writ, *if* the Supreme Court should so order.

The New Jersey Supreme Court declined to make the order and then proceeded to consider the question whether the writ of certiorari should be permitted "to exert its normal effect in staying proceedings for collecting the taxes."

The court referred to the statute then in effect, relating to refund of taxes—Chapter LXXXVI, p. 118, Laws of 1888, which provided as follows:

> "That when any corporation upon which taxes have been or shall be levied under the provisions of the act to which this is a supplement shall afterwards be found by the state board of assessors to be not liable under the said act for such tax, it shall be the duty of the said board to report and certify to the comptroller of the treasury the fact that such corporation has been found to be exempt from the tax imposed by the said act, and to cancel and declare null and void any taxes which may have been or shall be imposed upon such exempted corporation, and if any corporation has paid or shall pay the tax so improperly levied the comptroller of the treasury shall be and *is hereby authorized* upon receipt of such certificate to draw his warrant upon the state treasurer in favor of the proper officer of such corporation for any and all of such taxes which have been or shall be paid into the state treasury."

It will be observed that the provision of this act that the comptroller shall be "*authorized* * * * to draw his warrant * * *" is substantially the same as Section 15 of the Transfer Inheritance Tax Act, which provides

that when a tax has been paid erroneously "it shall be lawful for the comptroller" to draw his warrant, etc.

In construing the statute of 1888 the court said:

> "* * * We understand this supplement to be applicable to cases in which this court, on *certiorari*, adjudges the tax imposed to be unlawful in whole or in part, and to enable the court in such cases, by proper proceedings against the state board of assessors and the financial officers of the state, to compel the restoration of the unlawful tax paid. Thus the court can administer complete justice between the state and the corporation, without restraining the collection of the tax."

The result was that in that case the court directed that the writ of certiorari should not operate for a stay for proceedings to collect the tax.

In the present case the executors do not have to invoke the doctrine in the *Singer Company* case, that the New Jersey courts can administer "complete justice," as they are fully protected by the agreements between the executors and the State Tax Commissioner; but even if such agreements had never been made, the executors would still have the right to enforce, in the courts of New Jersey, a claim for refund of any taxes that might be found to be erroneously or illegally paid.

In *Arimex Copper Co.* v. *State Board of Assessors*, 69 N. J. L. 121, the Board has assessed the franchise tax against the prosecutor of the writ of certiorari, and the company voluntarily paid the tax as assessed; thereafter, the officers of the company learned that by a mistake of its agent the amount of its outstanding capital stock had been erroneously reported as $5,000,000, whereas, in fact, it was only $2,500,000, and that, therefore, the correct tax was substantially less than the amount paid.

The court reduced the tax to the correct amount, saying:

> "But the attorney-general contends that as the company paid the tax voluntarily, it is not entitled to have the assessment reduced to the legal amount. In view of the rigorous and speedy means authorized by the statute for enforcing the tax, it may be doubted whether the payment can be deemed voluntary; but if it be, still it resulted from a mistake of fact by the agent making the return, a mistake which the company might indeed have discovered by an arithmetical calculation before payment, but which it did not discover until months after payment. Such a payment would not bar a suit for reclamation against another payee than the sovereign, and it does not lessen the moral obligation of the sovereign to see that justice is done."

The question then arose whether the court should make an order to restore the excess. The court held that it had no authority to do so, for the reason that by Chapter 401, page 788, Laws of 1895, it was provided: "No money shall be drawn from the treasury unless it shall have been explicitly appropriated by the annual appropriation act to the purpose for which it is drawn."

As shown by the affidvait of Mr. Kelly, it has been the practice for many years up to the present time, to include in the annual appropriation bill a blanket provision for the refund of claims under the transfer inheritance tax; "and there is hereby appropriated an amount necessary therefor."

V.

The judgment of the Supreme Court of the State of New Jersey does not violate the full faith and credit clause.

In their bills of complaint the appellants alleged a violation of the full faith and credit clause, in that the appellees by threatening to collect transfer taxes, failed to give faith and credit to the judgment of the Supreme Court of Pennsylvania, adjudging decedent to have been domiciled in Pennsylvania (*Par. 63 of bill; R. 16*).

This claim receives only incidental reference in their brief, unsupported by discussion or citation of authorities. (*See Appellants' Brief, pp. 6, 38, 43 and 76.*)

Since the point is not expressly withdrawn, we cannot pass it *sub silentio.*

The New Jersey Supreme Court stated that it was in "thorough accord" with the results reached by the Vice-Ordinary (*R. 156*). Turning to his opinion on the subject —he said:

> "The constitutional provision invoked by the appellants is commonly known as the full faith and credit clause. It is true that under it, and the statute, the Courts of this State are bound to give to the judicial proceedings in Pennsylvania the same faith and credit as they have by law and usage in the Courts of Pennsylvania. But this is true only if the proceedings in the Pennsylvania Court were within the jurisdiction of that Court. It is always open to the Courts of the sister state to inquire into the jurisdiction of the Court which pronounced the judgment in question. When it is demanded of the Courts of one State that full faith and credit be accorded to the judgment of the Court of a sister State, 'an inquiry into the jurisdiction (of the latter Court) is always permitted, and if it be shown that (fol. 133) the proceedings relied upon were without the jurisdiction of the Court, they need not be respected.' Tilt *v.* Kelsey, 207 U. S. 43, at 59;

Thompson *v.* Whitman, 18 Wall. 457; Thormann *v.* Frame, 176 U. S. 350; Burbank *v.* Ernst, 232 U. S. 162.

Concededly the Courts of Pennsylvania had no jurisdiction to assess and levy the tax in question unless the decedent was domiciled in Pennsylvania. It is therefore open to this Court, in the exercise of its right to inquire into the jurisdiction of the Pennsylvania Court, to inquire into, ascertain and determine whether or not the decedent was domiciled in Pennsylvania. If it be determined that he was not domiciled in Pennsylvania, then the determination of the Pennsylvania Court that the transfer inheritance tax assessable in respect of his intangible personalty is due to the State of Pennsylvania, is in no wise binding upon this Court and can in no wise interfere with the right of this Court to inquire and determine if the decedent was domiciled in this State, and to affirm and establish (if it finds that decedent was domiciled in this State) the right of this State to levy the tax in question and the validity of the tax so levied and now under appeal" (*R. 85, 86*).

He then proceeded to consider the fundamental question of domicil (discussed more fully hereinafter), and concluded that the testator was not domiciled in Pennsylvania at the time of his death, and therefore the decision of the Pennsylvania Supreme Court was not binding upon the New Jersey courts (*R. 93*).

But, the appellants say, this clause of the Constitution "does not apply to the Federal courts" citing *Baldwin* v. *Iowa State Traveling Men's Association*, 283 U. S. 522 (*Appellants' Brief, p. 76*).

The proposition as thus stated is somewhat startling; of course it is not accurate.

All that the cited case held, on this subject, was that the provision did not require full faith and credit to be given to a judgment of a Federal Court in one state by a Federal Court in another state.

The court further held that the judgment in question in that case was *res judicata*, notwithstanding that the respondent had entered a special appearance expressly reserving submission to the jurisdiction of the court in which the judgment was entered, saying: "Public policy dictates that there be an end of litigation" (*p. 525*).

We cite this same case in support of our claim that the judgment of the New Jersey Supreme Court is *res judicata*.

The constitutional provision relates to the judgments of a court of a foreign state when properly presented to the courts of another state, as was done in *People &c. New York* v. *Coe Mfg. Co.*, 112 N. J. L. 536 (affirming 10 N. J. Misc. 1161). It imposes a rule of evidence and not of jurisdiction, *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 292.

It does not mean that the courts of one state have to accept the findings of fact or conclusions of law of the courts of another state. It merely means that the courts of one state are not permitted to go behind the judgment of the court of another state, except on the question of jurisdiction, when that judgment is duly presented and authenticated in a proceeding in the courts of the sister state for the entry of judgment thereon. The provision applies only for the purpose of enabling a judgment of a foreign state to be established as a judgment in another state.

The New Jersey courts hold that a judgment of the court of a sister state has no effect in New Jersey, except as evidence, and cannot be enforced without a new suit between the same parties on that judgment in the tribunals of this state. *Bullock* v. *Bullock*, 51 N. J. E. 444, 447, 451, *affirmed*, *52 N. J. E. 561, 567, 568-9*, holding that a foreign judgment cannot extend to control property in another state. See also *Wisconsin* v. *Pelican Ins. Co.*, *supra*, (*p. 292*).

The Pennsylvania judgment is not *res judicata* in any court in New Jersey for the following reasons:

(a) *There is no identity of the thing sued for.* In Pennsylvania the suit was a proceeding *in rem* to assess transfer inheritance taxes under the laws of Pennsylvania upon property located in New Jersey, over which the Pennsylvania courts had no jurisdiction. The subject matter of this suit is the validity of an assessment of inheritance taxes under the laws of New Jersey, where all the property of the estate was located and was administered under a will probated here.

(b) *Consequently the cause of action is different.*

(c) *There is no identity of persons or parties.* Neither the State of New Jersey, nor any of its officers, agents or representatives, were parties in the Pennsylvania proceedings. *Blodgett* v. *Silberman*, 277 U. S. 1.

(d) *The Pennsylvania judgment does not control the issue in this proceeding.* The judgment in Pennsylvania does not control the issue of decedent's domicil in the courts of New Jersey. A judgment of a court of a foreign state can have no effect in New Jersey, except as evidence, unless and until it is established as a judgment in the courts of this state by a proceeding instituted for that purpose. *Bullock* v. *Bullock*, 51 N. J. E. 444, 447-550; aff. 52 N. J. E. 561, 567-9; *Bennett* v. *Bennett*, 63 N. J. E. 306, 307-8. It is only in such a proceeding, if at all, that such a judgment is entitled to full faith and credit in the courts of this state under the Constitution of the United States. The plea of lack of jurisdiction is always admissible in such a proceeding, and more so here because the foreign judgment has not been established as a judgment in the courts of our state. Such a judgment cannot be used, and is not entitled to full faith and credit, in a proceeding in another state between different parties to establish a different claim.

This is not a case in which the executors were successful in the court of another state and now seek to enforce that judgment in this court. The successful party in the other state is not seeking to enforce its judgment here. The executors contended in the Pennsylvania courts that decedent was domiciled in New Jersey and they succeeded in the trial court. The Commonwealth of Pennsylvania claimed that decedent was domiciled in Pennsylvania, and its Supreme Court so held.

The executors appealed from the New Jersey assessment, not upon any genuine belief of his domicil in Pennsylvania, but *solely on the strength of the opposite conclusion of the Pennsylvania court.* That decision is merely the opinion of a court. Not being *res judicata,* the Prerogative Court was at liberty to review the evidence on the record before it and reach its own independent conclusion therefrom respecting decedent's domicil; so also with the New Jersey Supreme Court. In their present claim the executors have made a complete "about face" and now claim what, except for the Pennsylvania decision, they never did and do not now believe.

The decision of the Pennsylvania Supreme Court on the domicil of decedent is not controlling in this state. It is a judgment for taxes and is not effective outside of the territorial limits of Pennsylvania. One state cannot sue for taxes in the courts of another state or extend the effect of a judgment in its own state to the territory of another state. *Colorado* v. *Harbeck,* 232 N. Y. 71; *People* v. *Coe Mfg. Co.,* 10 N. J. Misc. 1162, 1163.

Questions involved in the construction and application of state tax laws and in the assessment and collection of taxes thereunder are local questions within the exclusive jurisdiction of the state courts. Power over such questions was not surrendered under the federal constitution and is respected by the federal supreme court as a pre-

rogative of the state courts. No state has the right to extend its judicial arm into another state to interfere with such questions. It cannot be claimed by anyone that the courts of New Jersey are precluded from determining the domicil of decedent; that is, whether he was domiciled in New Jersey or elsewhere at the time of his death.

In none of the cases in which the federal supreme court has held against taxation of intangible personal property in two states was there any question or dispute about the domicil of the decedent. Those decisions are therefore not authority for any contention that because Pennsylvania has obtained a judgment and forced collection of a tax, the courts of New Jersey are deprived of the right to decide whether decedent was taxable in New Jersey.

The executors voluntarily gave the courts of Pennsylvania jurisdiction in the Pennsylvania case, confident that they could prove that decedent was domiciled in New Jersey. They did so to the satisfaction of the Orphans' Court of Delaware County and of two of the justices of the Supreme Court of Pennsylvania, but in that gamble they ultimately lost.

The subject of inheritance taxation is the passing of property by will or under the intestate laws of the taxing authority. The decedent's will was not probated in Pennsylvania and no letters testamentary thereon, or of administration of his estate, have ever been issued in Pennsylvania, and the estate is not being administered under the laws of that state.

No property of decedent located in Pennsylvania passed under decedent's will. All of the property of decedent which passed by the will probated in Burlington County, New Jersey, was located in New Jersey and was not subject to the jurisdiction of the laws or courts of Pennsylvania.

The Pennsylvania courts had no jurisdiction over the executors. If they voluntarily submitted to that jurisdiction it is a matter for which they are personally responsible, and by which the estate or the State of New Jersey can in no wise be affected.

They possessed an adequate remedy, which it was their duty to pursue, in the federal courts to protect the property of the estate against an unlawful assessment in Pennsylvania. That remedy existed in a suit in equity in the federal courts to enjoin the assessment and collection of the tax after the Pennsylvania appraisement had been made, instead of resorting, as the executors voluntarily did, to the judicial proceeding of an appeal to the Orphans' Court of Delaware County to review that appraisement. The adoption of that course would have avoided trying the issues in the state courts of Pennsylvania. *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24.

The law of domicil is the law of the forum. Every state is free to define and establish its own standards of citizenship and the question of domicil.

In *Pennoyer* v. *Neff*, 95 U. S. 714, the court said:

(p. 722).

> "But, except as restrained and limited by that instrument (federal constitution), they (the States) possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil *status* and capacities of its inhabitants; * * * and also to regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed and transferred. The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and

authority over persons or property without its territory."

Numerous decisions of this court hold that judgments of the courts of one state are not entitled to full faith and credit, if the jurisdiction depended on domicil and that that question is open to re-examination by the courts of another state. See: *Burbank* v. *Ernst,* 232 U. S. 162; *Iowa* v. *Slimmer,* 248 U. S. 115; *Andrews* v. *Andrews,* 188 U. S. 14, 35; *Wisconsin* v. *Pelican Insurance Co.,* 127 U. S. 265, 291, 292; *Blodgett* v. *Silberman,* 277 U. S. 1, 18; *Baker* v. *Baker, Eccles & Co.,* 242 U. S. 394, 402; *Bonaparte* v. *Appeal Tax Court,* 104 U. S. 592, 594; *Olmsted* v. *Olmsted,* 216 U. S. 386, 395; *Chase National Bank* v. *Norwalk,* 291 U. S. 431, 440-1.

The rule is summarized in Beale's Conflict of Laws, Volume 2, page 1424, as follows:

> "The judgment of a sister state is presumed to be valid; and if no defect of jurisdiction appears on the record it will be taken as valid in the absence of evidence to the contrary. But evidence will always be admitted to disprove a jurisdictional fact, that is, a fact upon which the judgment of the foreign court was based. Such a fact commonly put in issue is that of domicil."

But assuming for the argument that the Pennsylvania court had jurisdiction over either the parties or the *res,* it had no jurisdiction over the State of New Jersey nor over the defendants, individually, or as officers of New Jersey; and, for the reasons above given, its judgment was not *res judicata* in this state, because, as held in the above cases, it could not preclude the courts of New Jersey from determining for themselves the questions of decedent's domicil, or the jurisdiction of the Pennsylvania court over the subject-matter of that suit.

The question here is the domicil of decedent. If he was domiciled in New Jersey, Pennsylvania had no right

to collect the tax. If he was domiciled in Pennsylvania, New Jersey has no right to collect the tax. The question is entirely one of domicil, *which is to be determined by the law of the forum.* It involves no constitutional question, but merely a question of fact. This was recognized by the executors in their Pennsylvania litigation, as evidenced by the fact that they raised no federal question in that case. *Dorrance* v. *Pennsylvania,* 287 U. S. 660.

VI.

Appellants have been guilty of laches in failing to bring the present suits promptly after the alleged administrative remedies were exhausted.

Assuming solely for the purpose of the argument that the claim of the plaintiffs that the judgment of the New Jersey Supreme Court is administrative rather than judicial, they are, nevertheless, in laches in seeking an injunction against the collection of the taxes.

Considering first the Pennsylvania litigation:

The principal ground of the appeal now made by the appellants to the equitable jurisdiction of the District Court, is that the appellees threaten to deprive them of their property, in violation of the due process clause. But that same point might have been raised by the executors in contesting the Pennsylvania assessment.

In the Pennsylvania litigation the executors consistently alleged that the decedent was domiciled in New Jersey at the time of his death.

After the Orphans' Court of Delaware County, Pennsylvania, had held that the domicil of the decedent was in the State of New Jersey, the Commonwealth of Pennsylvania appealed to the Supreme Court of that State. On such appeal, it was the manifest duty of the executors to

present and argue the question of due process before the Supreme Court of Pennsylvania, since, unless that question were so presented and argued, the United States Supreme Court had no jurisdiction by appeal or certiorari, to review an adverse decision of the Supreme Court of Pennsylvania.

But that question was not presented or argued in the Pennsylvania Supreme Court.

After that decision, the executors applied to this court for a writ of certiorari, and such application was denied solely "on the ground that the Federal question was not properly presented to, and was not passed upon by, the Supreme Court of Pennsylvania." *Dorrance* v. *Pennsylvania,* 287 U. S. 660.

The executors then filed with the Supreme Court of Pennsylvania a petition for reargument, and on January 10, 1933, that court denied the petition for reargument in an opinion which reads:

> "A general reargument of this case was not granted. Reargument was allowed under Rule 84, solely to permit the appellee-executors formally to bring to the attention of this Court the fact that they had filed an amended petition in the court of first instance suggesting a question or questions under the due process clause of the Fourteenth Amendment. On the appeal to this Court, no reference to the matter was made in the arguments though provision therefor is expressly made in Rule 47. The executors now urge that we pass on those questions, suggested in the court of first instance, and reconsider the appeal on a theory not presented when the case was argued here. The Commonwealth objects to such reconsideration, contending that 'They (the executors) deliberately elected to argue the case as one arising under the law of Pennsylvania.'
>
> At the time that this Court decided the question of fact,—in its judgment, a matter for decision according to the law of Pennsylvania,—it was held, for the reasons stated in the opinion filed, that

John T. Dorrance was domiciled in Pennsylvania. As no federal question was involved, or presented by the records or briefs or in the oral argument, for consideration in the decision of the basic matter of fact, none was considered or decided and none remains for decision.

No reason appears for modifying the decision originally made.

Justices Schaffer and Drew dissent from this order." (*R. 154, 5.*)

The neglect of the executors to properly present the point which they now urge renders them guilty of laches insofar as the present suits are concerned.

But the executors are further in laches insofar as relates to the Pennsylvania litigation because in that litigation they might have filed their bill in one of the Federal districts in the State of Pennsylvania to restrain the proceedings on the appraisement by the officers of the State of Pennsylvania. *City Bank Farmers Trust Co.* v. *Schnader,* 291 U. S. 24.

If they are entitled to an injunction against New Jersey or its officers in this case, they were clearly entitled to an injunction against Pennsylvania or its officers *four* years ago. But instead of adopting that procedure, the executors submitted to the jurisdiction of the Pennsylvania courts and took their chances of final success in those courts.

The mere fact that they happened to guess wrong as to the ultimate decision of the Pennsylvania courts is no ground for relief—several years later—in the Federal District Court for the State of New Jersey.

The decision of this Court denying the petition for certiorari to review the decision of the Pennsylvania Supreme Court was filed on December 5, 1932, and a rehearing thereof was denied on February 13, 1933. After the denial of that application, (and certainly after the

denial of the petition for rehearing thereof), the plaintiffs must then have known (if they did not know before), that there was substantial danger that they would eventually be compelled to pay the tax in Pennsylvania; and they must have then known, if they did not know before, that the decision of the Pennsylvania Supreme Court was not conclusive upon the New Jersey courts.

Again they took their chances—and ever since February 13, 1933 to April 2, 1935, they have refrained from filing their bill in the Federal Court of New Jersey—presumably because during this interval of over two years, they preferred to take their chances with the courts of New Jersey.

The executors admit that they have a remedy in the New Jersey Courts; they state in their amended bill, and one of the plaintiffs, George Morris Dorrance, swears (in his supplemental affidavit) that the executors of Dr. John T. Dorrance will take an appeal to the New Jersey Court of Errors and Appeals from the decision of the Supreme Court of New Jersey, "unless prior to the expiration of their time for taking such appeal, this action in the United States District Court renders such an appeal unnecessary" (*R. 31*).

The executors claim they have one year from February 11, 1935—that is, until February 11, 1936, in which to take such appeal. In other words, this is an admission that they not only have the right to take such an appeal to the Court of Errors and Appeals, but that they intend to do so, unless the Federal Court by its action should render such an appeal "unnecessary."

Considering now the New Jersey litigation, we have the following situation:

Under the case of *City Bank* v. *Schnader*, 291 U. S. 24, appellants had the same right immediately after October 17, 1931, and again immediately after October 10, 1932,

to file their bills for injunction in the Federal Court in New Jersey, as they now claim to have.

Instead of that course, the executors took an appeal to the New Jersey Prerogative Court. The conclusions of that court on the fundamental question as to domicil were filed on February 7, 1934—about fourteen months before the present bills were filed. These conclusions dealt specifically not only with the question of domicil, but with *all* the constitutional questions which the appellants now urge.

Since February 7, 1934, the appellants therefore must have known that so far as the New Jersey Prerogative Court is concerned, the decision of that court was against them on the very points which they now urge, including the fundamental question of domicil, and all the constitutional questions.

According to the allegations of paragraphs 37 and 44 of the original bills, the administrative procedure under the New Jersey Inheritance Tax Act "was at an end" when the assessment of the State Tax Commissioner had been sustained by the Prerogative Court.

It is true that appellants, as an afterthought, amended these paragraphs by adding the statement that the procedure in the New Jersey Supreme Court on certiorari is *also* administrative, but they still retain in the amended bills the original allegations that when the assessment had been sustained by the Prerogative Court, the administrative procedure "was at an end."

As we have shown elsewhere in the brief, the appeal to the Prerogative Court is judicial rather than administrative; likewise the certiorari proceeding in the New Jersey Supreme Court is judicial rather than administrative. But however that may be, the appellants again decided to take their chances in the New Jersey Supreme Court by

an application for a writ of certiorari from that court, to review the decree of the Prerogative Court.

Even if the procedure before the New Jersey Supreme Court is administrative rather than judicial, the appellants waited nearly two months before appealing to the Federal Court for relief.

We submit that in view of this history the appellants are clearly in laches; and that for this reason alone, the motion for interlocutory injunction was properly denied.

VII.

The evidence shows that the domicil of the decedent at the time of his death was in the State of New Jersey.

While appellants express their belief, at page 16 of their brief, that this court will not, on these appeals, decide the controversies on the merits, for which reason they say they do not summarize the testimony of certain of the appellants in the Pennsylvania case, and while they submit, at page 98, that these are not appeals on the merits, nevertheless at pages 6, 7-16, 84-98, 97-8 of their brief they do discuss the merits at length, but confine their discussion of the proof "to the averments of the bills of complaint (*R. 2, 493*) plaintiffs' injunction affidavits (*R. 17, 32*), and plaintiffs' reply affidavits (*R. 157-221*)" (*Brief p. 7*); ignoring entirely the remainder of the record, consisting of the answers and exhibits annexed thereto (*R. 35-110, 509-540*), the answering affidavit of William D. Kelly and the exhibits attached thereto (*R. 110-157*), the testimony of George Morris Dorrance (*R. 237-284*) and Ethel M. Dorrance (*R. 362-441*), two of the persons who make affidavits or reply affidavits on behalf of the appellants in these cases (*R. 20-31, 214-16*), the testimony of Arthur C. Dorrance (*R. 285-314*) and William D. Lippincott (*R. 314-362, 441-454*), the abstract of record in the State Tax Department (*R. 455-467*), which includes the statement of

facts submitted to that Department by counsel for the executors (*R. 464-7*), the petition of the executors for opening the assessment (*R. 470-3*), and the abstract of the record in the New Jersey Supreme Court (*R. 477-489*). If the cases are to be considered on their merits, they should be considered on the entire record and not solely upon the allegations of the complaint and the *ex parte* affidavits filed in support of the motion for interlocutory injunction.

The only material in these cases that was not offered and considered before the State Tax Commission in New Jersey, the New Jersey Prerogative Court, and the New Jersey Supreme Court, is the complete alleged diary record of where decedent spent his nights from January 1, 1926, to September 21, 1930 (*R. 159-213*), "information" for which, the affidavit which includes that diary states, was received by affiant from Dr. Dorrance (*R. 158-9*). Part of the entries in that diary, for the whole period, was offered on behalf of the appellants before the State Tax Commissioner in support of their claim of decedent's domicil in New Jersey, and was included in the record before the Prerogative Court and the state Supreme Court.

The text books on domicil herein cited are:

Sir Robert Phillimore "Law of Domicil," (Phila., 1847); Cited as "Phillim" (star paging).

A. V. Dicey "The Law of Domicil" (London, 1879); Cited as "Dicey."

Kossuth Kent Kennan "A Treatise on Residence and Domicil," (Rochester, 1934); Cited as "Kennan."

Abstract definitions of domicil are discussed in *Phillim.* 11-13; *Dicey,* 3-4; *Kennan,* 1-16, but none is intrinsically correct without the aid of the facts in each given case. Domicil is not a place; it is a moral or legal relation subsisting between a man and a place. *Phillim.* p. 12; *Kennan,* p. 60. The relationship is a question of law but the establishment of that relationship is a question of fact, in

which, all authorities agree, intention (*animus manendi*) is the essential and controlling factor.

In addition to the foregoing authorities, the following are submitted for a discussion of the fundamental principles:

1 Halleck's, Int. Law, pp. 444-53, Sec. 5-18;
1 Wharton's Confl. L. (*3d ed.*); pp. 77-90, 116-201;
Story's Confl. L. (*3d ed.*), pp. 83-166;
2 Kent's Comm. 431, *note* (*f*);
Jacobs, on Domicil, pp. 53-99, 113;
10 Am. & Eng. Ency. (*2d ed.*), pp. 9, 18, 20, 21, 24-5, 26-7, 28-9;
19 Corpus Juris, pp. 392-410, 422-441;
3 Moore's Int. L. Dig., pp. 811-854;
1 Beale's Treatise on Conflict of Laws (1935) Ch. 2 pp, 87 *et seq.*

Reduced to a few simple rules, those principles may be stated as follows:

1. A residence at a particular place, accompanied with positive or presumptive proof of continuing it an unlimited time.

2. A domicil once obtained, remains until another is acquired.

3. A change of domicil requires the actual removal from the former domicil *and* an intention to *abandon* the old domicil.

4. A person may have more than one residence but he cannot have more than one domicil.

5. If a person has two or more residences at different times of the year, that will be esteemed his domicil which he himself selects, or describes or deems to be his home, and where he votes or exercises the duties of a citizen.

6. A person is at liberty to choose his domicil, and his motive is unimportant if he acts in good faith.

7. The burden of proof of change of domicil rests upon him who alleges such change.

Phillimore says:

"Whenever the facts and circumstances are such as to beget a doubt whether a domicil has been acquired or not recourse must be had to probable conjectures, and though all cases must in a great measure be dependent on their peculiar circumstances, yet it is most important to bear in mind, that the opinions of jurists and the decisions of Courts of Justice have impressed a character upon certain circumstances as affording the best criteria of domicil, as legal presumptions of the intention of the party deduced from his acts" (*p. 99*).

"The circumstances which appear principally to be relied upon as affording evidence of intention (*Animus manendi*) are the following:

1. Place of Birth or Origin.
2. Oral and Written Declarations.
3. The Place of Death.
4. The Place of Wife and Family.
5. The House of Trade.
6. The Depository of Family Papers and Memorials.
7. The Mansion House.
8. Descriptions in Legal Documents.
9. Possession and Exercise of Political Rights and Privileges.
10. Possession of Real Estate.
11. Length of Residence and lapse of time" (*p. 100*).

The proof on the question of domicil will now be considered; for convenience, it will be classified under the headings, as above set forth by Phillimore.

1. Place of Birth or Origin.

Decedent was born November 11, 1873, at Bristol, Bucks County, Pa. He graduated in 1895 from the Massachusetts Institute of Technology and went to Germany to attend a university where he took his degree of Doctor of Chemistry. On his return from Germany in 1897, dece-

dent entered the employ of the Joseph Campbell Preserve Company in Camden, N. J., and established his residence in that city. He went to Baltimore to be married in 1906, and returned with his wife to his Camden residence and remained there exclusively and continuously until 1911, except for temporary intervals which he and his wife spent with his brother in Philadelphia or at Atlantic City while they were looking for a permanent home in New Jersey (*R. 237-41*). The residence property, known as "Pomona Farm," in Cinnaminson Township, Burlington County, New Jersey, where he died on September 21, 1930 (*R. 243*), was purchased by him in 1909 (*R. 350-2, and 479*), and after extensive alterations and improvements had been made, it became on May 7, 1911, his permanent home (*R. 241-3*).

From that date until November 14, 1925, when his family first occupied the house at Radnor, Delaware County, Pennsylvania (*R. 245*), there is no question that his domicil was in the Township of Cinnaminson, Burlington County, New Jersey.

The sole dispute is whether at that time decedent abandoned his New Jersey domicil and acquired a new one in the Township of Radnor, Delaware County, Pa., and retained it until his death.

(*See Phillim. pp. 101-112, 304-5*).

2. Oral and Written Declarations.

The intention with respect to domicil may be shown by declarations of the party. *Kennan,* 71, 72, 74, 75, 78, 88, 92, 93, 119, 120, 165.

The period to which this heading applies is from the purchase of the Radnor house, April 22, 1925, to decedent's death on September 21, 1930. Those written declarations which were in the form or nature of legal docu-

ments, or related to the exercise of political rights or privileges, will be discussed under separate headings.

Oral Declarations.

William D. Lippincott has known decedent since prior to 1910, when he became (and ever since has been) counsel for the soup company, and was decedent's personal counsel from 1912 until his death (*R. 314-316*).

At various times since the purchase of the Radnor property decedent informed Judge Lippincott that his legal residence was at Cinnaminson and that he did not at any time intend to acquire a legal residence in Pennsylvania (*R. 321-7*).

During the year preceding decedent's death, in a conversation with his brother, Arthur, who talked of acquiring a residence site on the soup company property at Cinnaminson, decedent told his brother that his *home* had been there since 1911, and he would continue to occupy it as such for the rest of his life, regardless of what residences he might have in Pennsylvania, Maine or any other place (*R. 289, 290, 466*).

In October, 1926, decedent was invited to become a member of the Board of Directors of the Pennsylvania Railroad Company, and he was elected to that board October 13, of that year. His residence and post office address was then recorded on the records of that company as Cinnaminson, New Jersey, and that address was never changed (*R. 466*). In discussing that matter with his brother, George, the latter inquired whether a membership on that board would require decedent's residence to be in Pennsylvania. Decedent informed him that if that was necessary he would refuse the election, but that he had been informed that it was not necessary to change his residence from New Jersey. Decedent stated that he intended to remain a citizen of New Jersey and decline that director-

ship if necessary, because he would refuse to surrender his rights as a citizen of New Jersey. His brother, George, advised decedent that he should remain a resident of New Jersey and if a membership on that board of directors amounted to a change of his residence, he, George, would object (*R. 250-1; 280-2*).

Decedent also discussed this subject with his brother Arthur and stated to him that he would refuse the election to that board, because he was a resident of New Jersey and understood that residence in Pennsylvania was necessary thereto. Later decedent informed his brother Arthur that he had conferred with General Atterbury, President of the Railroad Company, and had been assured that Pennsylvania residence was not necessary and that they knew when he was elected that he was a resident of New Jersey. On these conditions decedent accepted the directorship (*R. 288*).

Decedent was a member of the Board of Managers of the Girard Trust Company from 1926 until his death. The annual reports made by the Girard Trust Company to the Banking Department of the State of Pennsylvania, which included the names and addresses of the officers and Board of Managers, give decedent's address as Camden, N. J. (*R. 479*), where his business office was located.

Decedent was Senior Warden of Christ Episcopal Church at Riverton, N. J., for many years, and until his death (*R. 465*).

The records of the vestry meetings showed regular meetings in January, April, July and October of each year. A record of 17 meetings, held between January 11, 1926 and May 9, 1930, showed that decedent was present at two meetings in 1926, three in 1927, one in 1929 and two in 1930 (*R. 489*).

In 1928, decedent discussed with his brother, Arthur, certain questions regarding the management of decedent's

estate. He told his brother that if he had anything to do with the management of that estate his will must be probated in New Jersey and his estate administered there. Decedent instructed his brother to oppose to the "last ditch" any effort to have the estate administered in Pennsylvania (*R. 288*).

In a conversation with his wife, after the purchase of the Radnor property, decedent told her that he was always going to have his residence in New Jersey on account of his business interests there and that it was too far and too inconvenient for him to live permanently in any place in Pennsylvania (*R. 382*).

Written Declarations.

Many of the written declarations of decedent respecting his domicil in New Jersey, except those which are considered under a separate heading as legal or quasi legal documents, are listed or summarized in the abstract of record (*R. 477-489*).

A letter from the decedent addressed to "Republican Voters"—issued in 1924, shortly previous to the September Primary of that year, headed "Pomona Farms, Cinnaminson, New Jersey," and referring to Primary Day on September 23rd, and the selection of a Republican candidate for United States Senator, says:

> "This is a great state. It is your home and my home." "As one voter to another, as one resident of New Jersey to another, I take the liberty to ask you to consider how splendidly Senator Walter E. Edge measures up to this big job" (*R. 480*).

A letter of December 4, 1925, from decedent to the Social Register, asking to be listed therein in two places, says:

> "My home at Cinnaminson, N. J., and house known as 'Woodcrest,' Radnor, Pa." (*R. 481*).

Letter of January 11, 1926 from decedent to Senator Edge, suggesting repeal of "Seven Sisters" (referring to certain corporation laws of the State of New Jersey) (*R. 482*).

January 15, 1926: Letter from decedent to State Senator Davis, suggesting appointment of committee to revise New Jersey Corporation Laws (*R. 457 and 482*).

September 28, 1926: Letter from decedent to the society editor of the Philadelphia Ledger referring to a published statement therein that decedent's daughter would entertain at "Woodcrest," Radnor, on October 10th, and stating that the statement was not correct as there would be no entertainments on that date "either at 'Woodcrest,' Radnor, or at my home, 'Pomona Farm,' Cinnaminson, N. J.". (*R. 458*).

December 6, 1926: Letter from decedent to Laura Bishop, Burlington, N. J., stating that he is perfectly satisfied with the servants "I now have at my home at Cinnaminson" (*R. 458*).

January 10, 1927: Letter from decedent to Reverend Richard Gurley, St. Martin's Church, Radnor, Pa., stating that

> "inasmuch as we are maintaining our residence at Cinnaminson, N. J., and membership in Christ Church, Riverton, N. J., in which church I am Senior Warden, it is not Mrs. Dorrance's or my desire that we or our children be included in the membership of St. Martin's Church, Radnor" (*R. 458*).

April 1, 1927: Letter from decedent to Thomas N. McCarter expressing a desire to correct the impression contained in Mr. McCarter's letter of March 29, 1927, that decedent is no longer a Jerseyman.

> "For twenty years I have maintained a residence in New Jersey, and still do. Our home at Cinnaminson, N. J., is always open, and Mrs. Dorrance, the

children, and I get a great deal of pleasure spending a portion of each month there, except when we are in Europe" (*R. 458*).

November 6, 1927: Letter from decedent to John M. Scott, of Philadelphia, acknowledging a letter of the day before inviting decedent to become a member of the Pennsylvania Society of the Sons of the Revolution. Decedent expresses doubt as to his eligibility therein "as I am a resident of Cinnaminson, Burlington County, New Jersey, and propose to maintain my residence there" (*R. 459*).

March 15, 1928: Letter from decedent acknowledging receipt of a letter of a previous date inviting decedent to attend a dinner at Philadelphia to discuss public charity for Pennsylvania and stating,

> "I am a resident of the State of New Jersey, and would consider it quite out of place for me to discuss methods by which residents of Pennsylvania should collect and distribute their charity" (*R. 459*).

April 27, 1928: Letter from decedent to Eldridge R. Johnson, stating that he hastens to correct an impression of Mr. Johnson that decedent is non-resident in the State of New Jersey, stating—

> "I am now, and have been a resident of the State of New Jersey continuously since I first voted, and Mrs. Dorrance, our children and I propose to continue to hold our residence in New Jersey, where we maintain a home in which we keep a minimum of four servants throughout the year. Also, we will continue to be more interested in the welfare of our State.
>
> "While at present my family do not go as often as they desire to Cinnaminson, this is due to the illness of my mother and sister, who live there, and our fear that the children might annoy the invalids. This year we expect to spend at least two months at home in Cinnaminson" (*R. 459*).

3. *The Place of Death.*

The place of death is not necessarily controlling, but, taken in connection with the other circumstances in this case, it is peculiarly significant and persuasive here. In addition to the Radnor house and the Cinnaminson house, decedent had summer homes on the New England coast. In the summers of 1926 and 1927 his family occupied a house at Jamestown, Rhode Island. In the summers of 1928, 1929 and 1930 they occupied a house at Bar Harbor, Maine (*R. 376-380*).

Spring and summer were the busy seasons at decedent's factory and he spent much of his time there, staying at the Cinnaminson house while the family were at the summer residences (*R. 376*). During the summer of 1930 decedent remained more than usual at his Bar Harbor house on account of his health. He returned with his family on September 14, 1930, to the Cinnaminson house and never returned to his place of business. He had an attack on September 16, and died September 21, 1930, surrounded by his family (*R. 381*), and was buried from Christ Episcopal Church at Riverton, of which decedent's family were members and of which decedent had for many years been Senior Warden.

(See *Phillim. p. 115.*)

4. *The Place of Wife and Family.*

The residence of a man's family at another place for part of the time, or for a substantial part of the time, does not affect a person's domicil, 3 *Kent's Com.* 431, note 1(b), *Kennan*, p. 36, 78, 114, 117, 173.

The purpose of the purchase of the Radnor house in May, 1925, and the beginning of its occupancy on November 14 of that year, was to provide a place for enjoyment by decedent's wife and family of the social advantages of the neighborhood, and for access by their children to the

private schools which they attended, during the winter seasons. They spent the greater part of the social and school season at the Radnor house, but it was closed in the summer. They spent the summer seasons in New England, and some part of each year in Europe, and all of them spent a part of the time, some more than others, at the Cinnaminson house, which is discussed under the heading of "The Mansion House."

It cannot fairly be said that decedent maintained his wife and family separately or permanently at the Radnor house. It was the "show place" of the winter season.

Leaving out of consideration, for this discussion, the time which the family spent in New England and Europe, which was a substantial portion of each year, the question of place of wife and family is left for determination as between the Cinnaminson house and the Radnor house.

(See *Phillim. pp. 115, 118, 23.*)

5. The House of Trade.

The fact that one has an important and regular business which has the elements of permanence is a much stronger indication of intent than in the case of one without any business affiliations. To retain an interest in a business in the locality from which one has removed is to weaken the proof of abandonment and requires some explanation (*Kennan*, p. 220).

Decedent entered the employ, in 1897, of the Joseph Campbell Preserve Company, in Camden, N. J. That company was later changed to the Joseph Campbell Soup Company, and at some undisclosed time thereafter he acquired an interest in the business. Since June 3, 1915, he has owned the entire capital stock of the company (*R. 255*), consisting of one million shares of common stock, and 120 thousand shares of preferred stock, appraised at $79,033,969.55, and has ever since been President and has

had full charge and control of the business and attended personally to all of its details, until his death (*R. 243-4*). It was reorganized in 1922 into the Campbell Soup Company, a corporation of New Jersey (*R. 315-6*).

The factory of the company and its general offices, which was the only business office of decedent, are located in the City of Camden, N. J.

At the time of decedent's death Campbell Soup Company was one of the largest in the United States engaged in canning and preserving food products (*R. 286*). The plant occupied 16 acres of land and employed from 4,000 to 5,000 people according to the season, between 65% and 75% of whom were residents of New Jersey. The company payroll was $60,000 per week. The maximum daily output of the factory was more than 9 million cans of soup. In 1930 it contracted for 24,000 acres of tomatoes in New Jersey, in addition to large quantities of other vegetables (*R. 287*).

To the affairs of that company decedent devoted his constant and exclusive attention. He supervised every detail of the business, including experimental development of raw materials and the operation of the farms from which he obtained his supplies (*R. 244*). Around his home at Cinnaminson, located conveniently near his factory in Camden, and in the agricultural area from which he obtained his supplies, he developed and operated extensive experimental farms for the purpose of improving the quality of seeds and plants of vegetables used in his business, and he continued his active personal interest in those enterprises up to the time of his death.

The reasons why decedent insisted on being a resident of New Jersey were the subject of conversation with his associates at business and at his meals at various times. Decedent said every man connected with Campbell Soup Company ought to reside in New Jersey and if decedent

did not stay in New Jersey he could not insist upon the rest living there. Decedent thought it essential to the business that their contacts should be in New Jersey (*R. 280*).

Aside from his office at the soup factory, decedent's house at Cinnaminson was the center of his business interest and activities. He stayed there more than his family, because he said it was too long a run to Radnor. He remained there during the summer season when his business was most active. The property, as he acquired it, contained 76 acres (*R. 479*).

(See *Phillim. pp. 122-5*).

6. Depository of Family Papers and Memorials.

Decedent left no real estate. The amended and corrected return of October 17, 1931, submitted by the executors to the Tax Commissioner, contains a recapitulation of all the property of decedent, with each kind enumerated, shows an aggregate of $115,121,518.92 (*R. 468-9*). Upwards of $110,000,000 of his estate was in the form of intangible personal property, all of which except $2,500,000, were kept in safe deposit boxes in banks in Camden, N. J.

Decedent's only business office was in Factory No. 1 of the Campbell Soup Company in Camden, N. J. nigh unto the places where his wealth was deposited, and where he had convenient access thereto and possession thereof at all times.

(See *Phillim. p. 125.*)

7. The Mansion House.

The Cinnaminson house is regarded as the Mansion House of decedent for the purpose of this heading.

Decedent acquired the property consisting of the house, grounds and surrounding farm lands, about 76 acres in all, by deed of November 20, 1909. On December 29 of the same year he conveyed it to the Joseph Campbell Soup Company (*R. 479*), in which decedent was then interested and of whose entire capital stock decedent afterward became the owner. He occupied the house and grounds under a lease from the soup company.

After alteration and enlargement of the house, decedent, with his wife and two children moved in on May 7, 1911. The remaining three children were born while that place was their sole residence—two of them in that house.

The house is built of brick and was about 50 years old. It was generally remodeled and enlarged by decedent after its purchase. It was surrounded by 7 acres of house grounds and contained large living rooms on the first floor, with eight bedrooms, three baths and an enclosed porch on the second floor, and four bedrooms and two baths on the third floor. The grounds were well kept and contained many beautiful old trees. The remainder of the 76 acres was cultivated as an experimental farm for raising vegetables for the soup company (*R. 259, 290-1; 301*).

The house was completely furnished and none of the furniture and equipment, except a chair and bed, were taken from that house to furnish the Radnor house (*R. 370*). The Cinnaminson house was never closed from the time they first occupied it in 1911 but was always kept open and in order for occupancy (*R. 406*).

When they moved in they had two children. They began with three servants and two nurses, and other servants

were added as occasion required, together with a chauffeur and an outside man. When they occupied the Radnor house in November, 1925, they took with them two governesses and a chauffeur from the Cinnaminson house but left three servants and a houseman.

The Cinnaminson house was always equipped with servants, more or less in number as the occasion required, and there were two servants there at the time decedent died in that house. When the family were at Cinnaminson they usually brought along some of their servants from Radnor, including the nurses for the children. A supply of clothing was kept at Cinnaminson and decedent's room there was kept in order at all times and was equipped with everything necessary in the way of clothing. Decedent said it was too long a run to Radnor and for that reason he would stay at Cinnaminson more of the time. He stated that he was always going to live there (*R. 289-290*).

No change was made in the house or its equipment after the occupancy of the Radnor house (*R. 293*). It was fully equipped with furniture, dishes, linen, beds, etc., just as it was before the Radnor house was purchased (*R. 252, 404, 409*). Groceries and provisions were kept there, after as before, the purchase of the Radnor house, and the family preserving was done there from the fruit of the trees on the grounds, every summer and fall as before. The house was heated in winter (*R. 373*).

Mrs. Dorrance continued to supervise the management of the servants and to purchase the food and other supplies, and they frequently entertained their friends and relatives there. There were plenty of servants there (*R. 274, 278, 293-294*).

The extent of the occupancy and entertainment by decedent's wife and children at the Cinnaminson house was limited between 1926 and 1929 by the illness of

decedent's mother and sister, who lived with him there (*R. 305, 404, 411*), attended by two nurses, in addition to the regular servants of the house (*R. 404*).

Decedent's mother was ill for about three years. She and his sister were brought to Cinnaminson in the fall of 1925. The sister died on June 16, 1928, the mother having died previously (*R. 247-8*). They were assigned rooms at the Cinnaminson house, while the remaining rooms were reserved for decedent and his family (*R. 249*).

The testimony respecting the amount of time decedent and his family spent in Cinnaminson after the purchase of the Radnor house is given chiefly by Dr. George M. Dorrance, Arthur C. Dorrance and by Mrs. Dorrance. Considerable information of that character was also given by Judge Lippincott in the statement of facts submitted with letter of May 2, 1931 to the Comptroller (*R. 236-284, 285-314, 362-440, 463-7*).

8. Descriptions in Legal Documents.

Under this heading are included those documents or declarations which are legal in their nature or are made pursuant to legal requirements.

Wills.

The execution of one's will in accordance with the laws of a particular place is evidence of domicil there. *Dupuy* v. *Wurtz*, 53 N. Y. 556.

The recital of one's residence in a solemn document, like a will, may fairly be presumed to speak the truth. Few written declarations can raise stronger presumptions of the testator's purpose and intention, or be more controlling in the determination of domicil. (*Kennan*, pp. 179, 180-1, 186-7.)

The Radnor house was purchased by deed dated April 22, 1935 (*R. 482*).

Between that date and May 15, 1928, when his last will was made, decedent made eight separate wills or codicils, in each of which he recited himself as "of the Township of Cinnaminson, in the County of Burlington and State of New Jersey," namely:

May 5, 1925 Will (*R. 477, 331-2*).
May 6, 1925, Codicil (*R. 478, 333*).
May 25, 1925, Will (*R. 478*).
June 30, 1925, Codicil (*R. 478, 333*).
July 30, 1925, Will (*R. 478*).
July 30, 1925, Codicil (*R. 478*).
October 17, 1925, Codicil (*R. 478, 334*).
May 15, 1928, Last Will (*R. 460*).

The recital of decedent's residence contained in each of those wills and codicils is the same as was contained in nine separate wills and codicils of decedent made prior thereto, from March 2, 1912, to May 19, 1924 (*R. 357-359*).

The will of July 30, 1925, gave to decedent's wife all the household goods, effects, etc., "In the house where I now reside, in Cinnaminson Township, Burlington County, New Jersey," and that provision was contained in his last will of May 15, 1928, where it appears in paragraph seventh (*R. 127*).

The codicil of July 30, 1925, appoints the appellants in No. 194 as executors and trustees, and contains a provision revoking the appointment of any of them who shall fail or refuse to probate the will, within 60 days after his death, before the Surrogate of Burlington County, New Jersey, or the Ordinary of the State of New Jersey. This provision was contained in all subsequent wills and codicils, including the last will of May 15, 1928 in which it appears as the thirty-third paragraph, limited to 30 days after his death (*R. 477*).

All the wills and codicils above mentioned, from the will of March 2, 1912, to the will of May 15, 1928, were drawn by Judge Lippincott, pursuant to decedent's instructions (*R. 332-335, 356-358*). After the execution they were all delivered into the possession of Judge Lippincott, who says that every word in each of them was dictated by him (*R. 359*).

The purpose of the trust created by the will was discussed by decedent with Judge Lippincott at different times. Decedent stated that he wanted to keep intact the soup company business, and his stock-holdings therein. Discussions on this subject began prior to the making of decedent's will of May 23, 1925, and continued until the making of the will of May 15, 1928 (*R. 316-317*). Decedent wanted a plan devised, whereby the income of his estate, above the amount necessary for the support and maintenance of his family, could be applied for federal and state inheritance taxes. He wanted the income accumulated and he authorized his executors to repair any depreciation of capital through the payment of such taxes, by borrowings, if necessary, and reimbursed out of income, so that the corpus of his estate would not have to be sold to meet tax payments (*R. 318*).

Judge Lippincott advised decedent that the plan contained in the will was legal in New Jersey, but could not be carried out in Pennsylvania (*R. 319*) because, under the laws of Pennsylvania, decedent's wife could take against the will and could insist upon her allotment of one-third of the personal estate, which she could not do under the laws of New Jersey (*R. 319-320*). In this opinion Judge Lippincott was supported by Justice Black (formerly of the New Jersey Supreme Court), who cited as authority the cases of *Adamson* v. *Ayres*, 5 N. J. E. 349; *Arnault* v. *Arnault*, 52 N. J. E. 801; *Wintermute's Will*, 27 N. J. E. 447; affirmed 28 N. J. E. 437.

The discussion between decedent and Judge Lippincott, about the provisions of the several wills, occurred many times (*R. 320*), and section Thirty-third (of the present will) requiring probate in New Jersey, was put on the codicil of July, 1925, after, and on account of, the purchase of the Radnor property (*R. 322, 345*). Decedent wanted his will probated in New Jersey (*R. 323*). He said that a number of persons had asked him if he was a Pennsylvania resident and that he had replied that he was not, and that he did not intend to leave New Jersey (*R. 324*). The same provision was put in the will of May 15, 1928, requiring probate in New Jersey, except that the time limit was reduced to 30 days (*R. 324*). In connection with the making of the will in May, 1925, Judge Lippincott advised defendant that since a previous conversation of theirs he had examined the law of domicil in New Jersey and found that if decedent retained his New Jersey residence, and had no intention of abandoning it as his home, his domicil was clearly in New Jersey (*R. 325-6*). Decedent then advised Judge Lippincott that he intended to retain his Cinnaminson home and keep it always open and supplied with servants and that he would always be there in the summer, spring and fall (*R. 326-327*).

Decedent's will of May 15, 1928, remained in the possession of Judge Lippincott (except for a short time in 1929) from the time it was made until he took it, a few days after decedent's death, to the Surrogate of Burlington County for probate (*R. 348-9*), according to instructions contained in the wills and codicils of decedent from 1925, until the making of the last will (*R. 349*), and in pursuance to decedent's instruction to Judge Lippincott in the summer of 1929, that he, Judge Lippincott, was to see to it that the will was probated in Burlington County (*R. 349*).

Domicil Agreement.

At the time of the preparation of the codicil of December 30, 1925 (*R. 346*), decedent asked Judge Lippincott if his wife had a right to take her legal residence in Pennsylvania, and decedent retain his in New Jersey. Judge Lippincott advised decedent that the domicil of a wife followed that of her husband, but that there was some talk in New Jersey of giving a wife the right to take a domicil where she pleased and that the matter might be covered by agreement (*R. 327*). At that time decedent gave Judge Lippincott notes for the preparation of such an agreement (*R. 327*), and he prepared the agreement in duplicate; one for Mrs. Dorrance and one for decedent, and those agreements were signed in decedent's office in Camden (*R. 327, 477*). Although the agreement was prepared in December, 1925, it was not signed until January, 1926. Judge Lippincott testified that the agreement was made in good faith and not for the purpose of creating evidence of declaration of intention. Judge Lippincott advised decedent that under such circumstances the agreement was valid (*R. 346*).

That agreement is dated January 11, 1926, and was intended to commit decedent and his wife against changing their domicil from New Jersey without notice to, or consent of the other, as therein provided (*R. 466, 7*).

It recites that the parties are—

> "Of the Township of Cinnaminson, County of Burlington, and State of New Jersey.";

the purchase by them, on April 22, 1925, of the Radnor residence, and that decedent and his wife—

> "are still residents of 'Pomona Farms' in the Township of Cinnaminson, in the County of Burlington and State of New Jersey, and still keep their house open at that place and intend to occupy the same during a portion of each year."

The parties mutually agree:

1. "That the residence of said John T. Dorrance, and Ethel M. Dorrance, his wife, shall continue to be at 'Pomona Farms,' in the Township of Cinnaminson, County of Burlington and State of New Jersey, as heretofore, notwithstanding the fact that * * * (they) may occupy during a portion of each year said lands and premises known as 'Woodcrest' * * *"

2. That neither party will change his or her residence from "Pomona Farms," Cinnaminson Township, Burlington County, New Jersey, to any other place, or undertake to do so without the written consent of the other.

3. That neither party will vote in any other voting place or election district than that in which said "Pomona Farms," at Cinnaminson Township, Burlington County, New Jersey, shall be located without the written consent of the other. The parties being now voters and are registered as such therein.

4. That neither party will file his or her income tax return in any other internal revenue district than that in which said "Pomona Farms" shall be located.

5. That neither party will claim to have any other residence than that at "Pomona Farms" in the Township of Cinnaminson, County of Burlington and State of New Jersey, without the written consent of the other.

6. In case of the death of either party the will of the one so dying shall be offered for probate in the office of the Surrogate of the County of Burlington in the State of New Jersey, without objection by the other as to the jurisdiction of said Surrogate to admit said will to probate, unless prior to the death of the one so dying it shall be mutually agreed between the parties in writing that their residence shall be changed to some place other than the Township of Cinnaminson, County of Burlington.

7. This agreement shall continue in full force and binding effect upon both parties unless changed in writing, signed by the parties (*R. 456, 7*).

At the time that agreement was made the domicil of the wife was that of her husband, and she was incapable of choosing a separate domicil, *Estate of Hartman*, 70 N. J. E. 664. In 1927 the Legislature of New Jersey passed an act (*Chapter 168, N. J. P. L. 1927, p. 325*) providing—

> "The domicil of a married woman shall be established by the same facts and rules of law as that of any other person for the purposes of voting, office holding, testacy, intestacy, jury service, taxation."

There is nothing in the record to indicate that Mrs. Dorrance ever established, or attempted to establish, a separate domicil, but if she did, by either act or deed, it was not binding on decedent and did not affect his domicil. On the contrary, in the sworn application of October 1, 1930, for the probate of decedent's will in Burlington County, she, with the other executors, stated that her then post office address was Riverton, New Jersey, and she gave the same address for her four minor children (*R. 129, 130*).

As one of the executors and in support of the contention that he was domiciled in New Jersey at the time of his death, she, with the other executors, put that same agreement in evidence before the Tax Department of New Jersey in 1931 (*R. 465*), and in the Pennsylvania case in 1932 as proof of his domicil in New Jersey (*R. 477*).

Passports.

Decedent and his wife, sometimes with other members of the family, went to Europe each year for a good many years. For 15 years or more prior to decedent's death his passport applications or declarations gave his place of residence as Cinnaminson, Burlington County, New Jersey. Several of these in which he declared his residence

at Cinnaminson, Camden, New Jersey, are included in Exhibit A-37 (so marked in Penn. litigation; see *R. 481*).

Decedent's passport applications were prepared by Mr. Kelleher, an officer of the soup company, who also prepared, and handled many of decedent's personal matters respecting automobile registrations, drivers' and commercial licenses, custom house declarations, etc. (*R. 466*).

His instructions from decedent were that his "place of residence" was Cinnaminson (*R. 467*).

Powers of Attorney.

Powers of attorney were executed and acknowledged by decedent May 15, 1928; March 26, 1929; September 12, 1929; all reciting decedent as "of the Township of Cinnaminson, in the County of Burlington and State of New Jersey" and showing that they were acknowledged before a notary public in that county and state (*R. 478, 9*).

Deeds.

Recitals in deeds are usually regarded as important indicia which are held to control in the determination of domicil. *Kennan*, p. 107.

When decedent and his wife acquired the Radnor house on April 22, 1925, the deed referred to them as "of Riverton, New Jersey" (*R. 482*). Occupancy of that property began on November 14 of that year. In a deed of June 30, 1928, by which decedent acquired some additional property adjoining the Radnor property, he and his wife are described as "of the Township of Cinnaminson, County of Burlington and State of New Jersey" (*R. 482, 3*). In another deed dated July 27, 1929, by which decedent and his wife acquired additional lands at Radnor, they are described as "of the Township of Cinnaminson, Burlington County, New Jersey" (*R. 483*).

In a lease dated April 4, 1930 (the year of his death), by which decedent leased a house at Bar Harbor for that summer, he is therein described as "of Cinnaminson, New Jersey" (*R. 483*).

Corporation Reports.

From 1926 until his death decedent was a member of the Board of Managers of the Girard Trust Company of Philadelphia. The reports of that company required by law and filed with the Banking Department of Pennsylvania, from March 23, 1927 to March 17, 1930 (ten in all) list decedent as follows:

"John T. Dorrance, Camden, New Jersey" (*R. 479*).

The annual reports of the Campbell Soup Company filed, as required by law, with the Secretary of State of New Jersey, for the years 1923 to 1930, inclusive, were executed by decedent as President, except the reports of 1925 and 1929.

In the reports of 1923, 1924, 1926, 1927 and 1929 he gave his address as Camden, New Jersey. In the report of 1925 his address was given as Riverton, New Jersey. In the reports executed by himself for 1928 and 1930, his address is given as Pomona Farms, Riverton, N. J. (*R. 480*). They are required by law to show the residence of the officers of the company. *2 Comp. Stat. 1625, Sec. 43 Corp. Act.*

Director's Oaths.

As a Director of the National Bank of Commerce, from 1924 to 1929, inclusive, decedent was required to take an oath of citizenship. That oath (for each year) stated that he was a citizen of the United States and "a resident of the State of New Jersey (*R. 482*).

Motor Vehicle Applications.

Applications for motor vehicle registrations were executed by decedent, under oath, September 29, 1927 (three applications); October 25, 1928 (three applications); October 28, 1929; October 30, 1929 and January 2, 1930, in which he gave his address as Camden, N. J. (*R. 484*).

Applications for driver's licenses were made by decedent under oath to the New Jersey Motor Vehicle Department on November 22, 1927, October 26, 1928, and November 20, 1929, in all of which decedent gave his residence as Cinnaminson, Riverton, Burlington County (*R. 483*).

Applications for certificates of title to automobiles made by decedent under oath were filed with the Pennsylvania Department of Highways, October 16, 1923, November 5, 1923, August 21, 1925, February 27, 1928, June 20, 1929, July 21, 1930, in each of which decedent gave his post office address as Camden, New Jersey (*R. 484*).

Decedent obtained a driver's license in Pennsylvania for the year 1930 on the application in which he gave his address as Camden, Camden County, New Jersey (*R. 482*).

Life Insurance.

The application of decedent, dated May 8, 1926, for insurance gave his residence as "near Riverton, Camden County, New Jersey" (*R. 663-5a*), and stated therein that his only residence during five years previously was Riverton, New Jersey, and that no change of residence was contemplated (*R. 484*).

Judge Lippincott, who had been counsel for the Soup Company since 1910 and for decedent personally since 1912, and had handled all of his legal affairs from that time until decedent's death, stated in the statement of facts of decedent's domicil in New Jersey submitted with his letter of May 2, 1931 to the Comptroller of New Jersey

that—"*Every document of which I have any knowledge signed by Dr. Dorrance states his residence as being in Cinnaminson Township, Burlington County, N. J.*" (*R. 466*).

(See *Phillim. pp. 13p-1*).

9. Possession and Exercise of Political Rights and Privileges.

Voting.

No criterion of domicil has been accorded more weight, or been regarded as more conclusive evidence, than the exercise of the right of voting. *Kennan,* pp. 157-161, 164, 166, 167, 168, 170, 171, 174, 219.

The poll books in the custody of the Township Clerk of the Township of Cinnaminson, Burlington County, New Jersey, containing records of ballots issued to voters at primary, general, and other elections in that township (with certain books missing), show that decedent voted there at primary elections in 1920, 1921, 1924, 1928 and 1929; general elections in 1924, 1925, 1926, 1927, 1928 and 1929; special election 1927, and that his wife voted there at primary elections 1920, 1921, 1924, 1927, 1928 and 1929; general elections 1924, 1925, 1926, 1927, 1928 and 1929; special election 1927. Neither decedent nor his wife ever voted in Radnor Township, Delaware County, Pennsylvania (*R. 479, 480*).

On March 20, 1930, decedent wrote a letter to Judge Lippincott inquiring whether the New Jersey law permitting absentee voting was still in effect. He said that he and his wife were especially anxious to vote in Cinnaminson Township, the place of their residence, at the then coming election and desired absentee permission. Judge Lippincott states that decedent was greatly disappointed when he informed him that absentee voting permission

could not be obtained (*R. 467*). Decedent died before the general election in 1930.

Taxes.

The payment of personal taxes is strong corroboration of the intent to remain and of the willingness to share the burdens of the community, and is one of the criteria more frequently resorted to in testing the question of domicil. *Kennan*, pp. 155, 219.

The fact that one has changed his domicil for the sole purpose of escaping burdensome taxation does not in any way militate against the good faith of a change which is otherwise complete; *Kennan*, p. 219.

The disavowal of any liability for taxation and the refusal to pay taxes is given weight on the question of intention respecting domicil; *Kennan*, pp. 97, 155.

Every person who is *sui juris* has the inalienable right to change or retain a domicil even though the motive which may prompt him to do so is questionable, including the object of avoiding excessive taxation; *Kennan*, pp. 322-3.

> "There is no doubt that a change of domicil may lawfully be made for the purpose of avoiding or lessening taxes. If a person actually changes his residence, the motive actuating him is of no consequence." *Commonwealth* v. *Bogigian*, 265 Mass. 531; 164 N. E. 472 at 474.

In *State Ex Rel. Orr* v. *Buder, 271 S. W. 508, (Mo.) 39 A. L. R. 1199*, at p. 1207, the court said:

> "In every case cited by respondent and the *amici curiae*, taxable property was manipulated in a way to avoid taxation. Here there was no concealment. There is no fraud in doing a lawful act. A man may change his residence to avoid taxation. He may change the form of his property by putting his money in nontaxable securities, or in the form of property which would be taxed less, and is not guilty of fraud. * * * One cannot be guilty of

> fraud by doing what he had a legal right to do. A court does not inquire into one's motives for doing a lawful act" (citing cases).

The records of the tax collector of Cinnaminson Township, Burlington County, New Jersey, for the years 1924 to 1930, show payments by decedent in that township each year for personal property, poll and other local taxes (*R. 479*).

The Assessor of Radnor Township, Pennsylvania, after decedent had purchased the Radnor house, sent to decedent, in the fall of 1925, the usual form of return for the Pennsylvania Four Mill Tax on personal property. Copies of that form for the years 1925 and 1926 were offered in evidence (*R. 484*). The instructions thereon state that the Four Mill Tax is due from every person above 21 years of age who is a resident or domiciled in the State of Pennsylvania. Domicil is therein defined as the place where the person permanently resides: They state:

> "Absence for months or years will not change it so long as there is an intention of returning, and it cannot be lost until another has been acquired. * * * A temporary residence in this state (Pennsylvania) renders taxable only so much of his personal property as he has actually within the state."

When decedent received that tax form he, after consulting Judge Lippincott, wrote a letter on February 3, 1926, to the assessor of Radnor Township returning the form, with his affidavit endorsed thereon that he was a resident and voter of Cinnaminson Township, Burlington County, New Jersey, and intended to continue to vote and reside therein, and that decedent was advised that under these circumstances, not being a resident of Pennsylvania, he was not subject to personal property tax therein (*R. 457-8*).

Taxes were naturally in the mind of decedent (as in everybody else's mind), as is indicated not only by the

extensive provisions in his will regarding inheritance taxes, but also by his correspondence and conversations at different times.

Decedent discussed with Judge Lippincott, the Pennsylvania property tax laws and the New Jersey inheritance tax laws, but never mentioned the Pennsylvania inheritance tax laws; a matter of such magnitude and importance to his estate that decedent would not have overlooked it, if he had any idea that he was subject to any assessment there.

State Office.

The acceptance of public office is usually considered as persuasive evidence of residence in that place, especially when the oath required to be taken recites that he is a resident, or where the office in question is one which could not legally be held by a non-resident; *Kennan, p. 139.*

On October 29, 1925 (less than a month before the occupancy of the Radnor house), the Governor of New Jersey appointed decedent "of Cinnaminson" a member of a commission of the State of New Jersey, created by the Legislature to investigate the question of compensation for personal injuries, etc. (*R. 481*).

Political Activities.

Decedent's political activities appear from the correspondence recited under the subheading "written declarations."

(See *Phillim. pp. 131-40.*)

10. Possession of Real Estate.

Decedent left no real estate.

The Cinnaminson property was acquired by decedent by deed dated November 20, 1909, and conveyed by him to Joseph Campbell Company by deed dated December 29, 1909 (*R. 479*). At that time decedent was interested in the Campbell Company and, from 1915 until his death, he was the owner of the entire capital stock thereof, and of its successor, Campbell Soup Company.

Title to the Radnor property was acquired in the name of "John T. Dorrance, of Riverton, N. J., and Ethel M. Dorrance, his wife." Upon his death complete title passed to the survivor.

11. Length of Residence and Lapse of Time.

This heading refers to the occupancy of the Radnor house during the winter seasons from November 14, 1925 to decedent's death on September 21, 1930.

The question under this heading is, what influence upon the determination of decedent's domicil during that period, has the length of residence and lapse of time with respect to that occupancy.

Phillimore cites the rule of the civilians that where a person retained the intention of returning to his family domicil, a thousand years would not suffice to establish a new one, *p. 148.*

In *Guier* v. *O'Daniel,* 1 Binn. (Pa.) 349, President Rush held—

> "There is no fixed period of time necessary to create a domicil. It may be acquired after the shortest residence under certain circumstances; and under others the longest residence may be insufficient for that purpose."

See *also Phillim. pp. 141, 146-9.*

Dicey says that residence alone is clearly insufficient to constitute an abandonment of an old domicil and the acquisition of a new one, which he says is apparent with respect to a person living abroad who may retain his old domicil which he may not have seen for years, *p. 84, 127.*

Where a domicil has been established and there is an intention to retain it, absence therefrom, regardless of the lapse of time, does not change the domicil. *Kennan,* pp. 34, 64 and Note 12, 67, 143, 204-5.

The legal presumption favors the established domicil, and the burden of proof rests upon him who asserts that a change has occurred. *Kennan,* pp. 11-12, 197, 220, 236-7.

Radnor House.

Where a person maintains two homes that will be esteemed his domicil which he himself selects, and which appears to be the center of his affairs and where he votes and exercises his rights and duties of citizenship. *Kennan,* pp. 107, 108, 110-11, 111 Note 40, 112, 148.

The Radnor house was purchased by decedent and his wife by deed dated April 22, 1925 (*R. 482*). Additional lands surrounding it were purchased on June 30, 1928 and July 27, 1929 (*R. 482*). The house was first occupied by decedent's family on November 14, 1925 (*R. 373*). At the time it was purchased decedent's brother George asked him whether he was going to move out there. Decedent replied, "No, my home is in New Jersey." Decedent said he was purchasing the Radnor place for his wife and kiddies but he, decedent, wanted to be over in New Jersey and he intended to have his home in New Jersey; that the purchase of the Radnor house would not involve any change in his residence (*R. 298*).

He told his brother that the Radnor house was necessary for his wife and children but that he was better at

Cinnaminson. Dr. George Dorrance testified that neither decedent nor his wife regarded the Radnor house as their legal home or residence (*R. 306*); that it was closed in the summer and the rugs were rolled up and the house was in no condition for occupancy (*R. 310*).

Judge Lippincott testified that he was present at the acquisition of the Radnor property and decedent then asked him whether that purchase would make any difference to his residence in New Jersey. Judge Lippincott advised him that residence was largely a matter of intention and if he retained his Cinnaminson property with the intention of making it his home, the purchase of the Radnor property would not make any difference to his residence in New Jersey (*R. 325-326*). Decedent stated that he intended to keep his home in New Jersey (*R. 342*).

Decedent discussed the purchase of the Radnor property with Mr. Morris, Chairman of the Board of Managers of the Girard Trust Company, of which decedent was a member. He told Mr. Morris he wanted a suitable place for his family for various periods of the year, particularly in winter, because he thought it would be more convenient than Cinnaminson for social engagements in the winter.

Mrs. Dorrance testified that she wanted decedent to buy the Radnor property to enable the children to be more in contact with their schoolmates and with children with their prospects in life, and where they could do some entertaining (*R. 368-9*).

Decedent told her that he would never go to live over there because it was too far from his business. She prevailed upon him to purchase the property on the express stipulation that she would spend a certain amount of the time in the summer at Cinnaminson. They spent the week-ends at the Radnor house when the children were not in school and a good deal at other times, except when they

were in New York or Florida for the winter, or abroad, or were at Cinnaminson.

They stayed at the Radnor house after the children's school commenced and when the social activities began about the first of October (*R. 373-4*). Decedent stayed with his family at Radnor during the week in winter time until the latter part of March or the first of April. Then they went abroad or stayed at Cinnaminson. They went abroad every year from 1922, and sometimes twice a year. The Radnor house was closed every summer, except 1926 (*R. 375-6*), when it was occupied by the servants only (*R. 404-5*). Upon returning from Bar Harbor they went to Cinnaminson and remained there until the children's schools opened.

The Radnor house was used for the coming-out party of their daughter, and her marriage reception on October 1, 1926, also for the marriage of the second daughter in May, 1931 (*R. 413-414*).

Commonwealth's Proof.

All of the evidence and exhibits reviewed under the above several sub-headings were introduced on behalf of the executors before the State Tax Department of New Jersey or at the trial of their appeal from the Pennsylvania appraisement before the Orphans' Court of Delaware County, Pennsylvania. There is no doubt that they diligently endeavored to collect and produce all the evidence that could be found in support of their contention and belief that decedent was domiciled in New Jersey at the time of his death.

The Commonwealth of Pennsylvania offered the testimony of certain witnesses and certain exhibits, which, to the extent that it is incorporated in this record, will now be briefly reviewed.

They presented the application of Mrs. Dorrance (as owner) to the Pennsylvania Department of Revenue for the registration of an automobile for the year 1930. On that application, she gave her address as "Radnor, Del. Co., Pa." (*R. 485*).

They produced the ledger sheets of Bonwit-Teller & Co. showing an account in the name of "Mrs. John T. Dorrance, Radnor, Pa," (*R. 485*). Purchases were delivered to her at Radnor and the bills were sent there because she was there most of the time in the winter, which was the season during which most of her purchases were made. She testified that she thought it would be "ridiculous" to ask that firm to charge the account to Cinnaminson, N. J., and send the purchases to Radnor (*R. 428-9*).

They produced the ledger sheets of Bailey, Banks & Biddle, showing an account opened July 22, 1924, with the address of decedent as 32 N. Front St., Camden, N. J.—Riverton, N. J. The sheets show (without any explanation or instructions) that on March 21, 1925, that address was stricken out and "Woodcrest, Radnor, Pa." substituted. The sheets continued that way until decedent's death, and the account was afterwards continued in the name of Mrs. Dorrance with the same address (*R. 485*). Mrs. Dorrance testified that that account was in her name. She bought very few things there for her children and herself, except at Christmas time, which they usually spent at Radnor, and for that reason the things were sent there (*R. 430-1*).

They produced a letter from decedent dated April 19, 1926, to Strawbridge & Clothier, Philadelphia, stating that decedent had suggested to his wife that she do part of her shopping at that store, and asking them to open an account in the name of Mrs. John T. Dorrance "Woodcrest, Radnor, Pa." The notation on the back of that letter giving the name of Mrs. John T. Dorrance, residence

and business address, and the approval by the credit department, were placed there by that company (*R. 486*). They also produced the bookkeeper's checks of that company showing various articles delivered to decedent's family at Radnor on sixty-eight different occasions (*R. 486*). Regarding this account, Mrs. Dorrance testified that after it had been opened, it was suspended and afterwards re-opened in her name in April 1926. The purchases were delivered at Radnor (*R. 427, 8*).

They produced the ledger sheets of Mitchell-Fletcher & Co. of an account with Dr. J. T. Dorrance from March 1927 to August 1929 with the address "Radnor, Pa." (*R. 488*).

The records of the Telephone Company were produced respecting telephone service at the Radnor house. They showed—"Dorrance, Ethel M. Res. Woodcrest, Radnor."

They produced an application for gas and electric service at the Radnor house, dated May 14, 1925, and signed "Mrs. Ethel M. Dorrance." She referred to the house as "occupied by me as a residence." On the back of the application, there is a notation *by the Gas Company* "former residence New Jersey" (*R. 487*).

They produced excerpts from the Social Register of Philadelphia for the years 1926, 1927 and 1928 giving the address of decedent, his wife, and the members of his family, as "Woodcrest. Radnor, Pa." and for the years 1929, 1930 and 1931, showing their address as "Woodcrest, Radnor, Pa., and Cinnaminson, N. J." (*R. 486*). It appears that the addresses given in the Social Registers of 1926, 1927, and 1928 were inserted contrary to the *express instructions* of decedent in a letter dated December 4, 1925, from him to the publisher wherein he requested them to put in both addresses, as follows "*my home* in Cinnaminson, N. J. and *house* known as 'Wood-

crest,' Radnor, Pa." and subscribing for both places. (Italic ours.) (*R. 481*).

Mrs. Dorrance testified that she gave the Radnor address for members of the family to the Social Register because her eldest daughter was making her debut at that time and wanted an address by which her mail would reach her *during the social season.* Decedent wanted both addresses, Cinnaminson and Radnor, given, but Mrs. Dorrance herself gave the Radnor address *as the winter address* for 1925 and 1926, in order to secure prompt delivery of mail. The Riverton or Cinnaminson address was given as a *summer address.* In 1929, the Social Register finally put in the address and telephone number of the Cinnaminson house because decedent insisted upon it. Although he had requested both addresses in his letter of December 4, 1925, they were not put in, so decedent finally attended to the matter himself but they did not put in both addresses until 1929, when he did subscribe twice. Decedent consented to give his *winter address* as Radnor to enable his children to receive promptly such invitations as was sent to them, and to avoid the delay of their being forwarded from Cinnaminson. Mrs. Dorrance stated that the Social Register did not presume to give residence; but merely gave addresses and telephone numbers.

They produced an enrollment card of John T. Dorrance, Jr. at Montgomery School, Wynnewood, Pa., signed "Ethel M. Dorrance," as parent or guardian, and giving opposite the printed words "home address," Radnor, Pa., and his entry blank in that school dated July 18, 1927, signed "J. T. Dorrance," as parent or guardian, address, Woodcrest, Radnor, Pa., and another entry blank for the same, dated August 13, 1930, signed "J. T. Dorrance," as parent or guardian, address "Woodcrest, Radnor, Pa." (*R. 487*). Mrs. Dorrance testified that she entered her son in the Montgomery School in the autumn of 1925 and that

she probably gave Radnor as the address on the enrollment card *because they were living there in the winter* (*R. 434*).

They produced a family card, dated January 19, 1929, at the Merion Cricket Club, Haverford, Pa., in which decedent requested cards of admittance for that year for his wife and three daughters. Under the printed words on the card "who reside with me at the address stated below" are the words "Woodcrest, Radnor, Pa.," and another card dated January 15, 1930, for that year, signed by the decedent, contained the same information (*R. 487-8*).

Mrs. Dorrance testified that her second daughter entered the School of Industrial Arts of Philadelphia one year while she was abroad, but that she (Mrs. Dorrance) never gave that school the Radnor address. She was connected with the Emergency Aid in Philadelphia, beginning prior to 1925, that she gave her address as Riverton or Cinnaminson and she does not think that she ever changed it. She did however, send checks from Radnor, and if the Emergency Aid ever changed her address, they were not instructed to do so. She has also belonged to the Acorn Club of Philadelphia since 1929. She never gave them any address but assumes that the person who proposed her name must have given her address as Radnor (*R. 435-6*).

Mrs. Dorrance kept a small bank account at Wayne, near Radnor, for the payment of household bills at that place. The address on that account was Radnor; it does not appear that she gave that address to the bank (*R. 436*).

The Commonwealth also offered certain letters; one from decedent at Camden, N. J., dated July 16, 1927 accepting the resignation of Arthur Bibby, addressed to Bibby at Radnor; another from Mrs. Dorrance on February 20, 1928 from hotel at Long Key, Florida, addressed to Martha, a servant, asking her to send some clothes, and addressed to Radnor "c/o J. T. Dorrance"; another

letter from Mrs. Dorrance to Martha from a hotel at Jamestown, dated July 24, 1927, addressed "c/o J. T. Dorrance" at Radnor. Another letter from Mrs. Dorrance, dated April 18, 1928, from Radnor, recommending Martha as a maid (*R. 488-9*).

Comparing the nature and extent of the proof, and the character and standing of the witnesses on either side, the proof of decedent's domicil in New Jersey is overwhelming.

The Pennsylvania Decision.

In his letter of May 2, 1931, to Mr. Kelly of the Inheritance Tax Bureau, Judge Lippincott said that the appeal from the attempted taxation by Pennsylvania is unfortunately to be heard in Pennsylvania courts. Without reflecting in any way upon those courts, I may say that the prize is a rich one for Pennsylvania to secure and that the Pennsylvania authorities will not stop at anything in their efforts to secure an adjudication upholding the assessment (*R. 464*).

Our view is that the opinion of Judge Hannum in the Orphans' Court of Delaware County, and the dissenting opinions of Justices Kephart and Schaffer, (reported in 309 Pa. 151; 163 Atl. 303, 311, 313) are correct expositions of the law of domicil, even in Pennsylvania.

The decision of the Pennsylvania Supreme Court is discussed at length by *Kennan*, p. 759-64; it is sharply criticized by him (*p. 762*). He refers to the principles upon which the Orphans' Court decided the case in favor of the New Jersey domicil, and to the statement of the Pennsylvania Supreme Court that "These principles may be accepted as good law in particular cases" but were not applicable here, and makes the pertinent observation that "precisely why principles which 'may be accepted as good law in particular cases, cease to have

application when applied to the facts of the Dorrance case, does not clearly appear."

He notes that the Supreme Court of the United States has said that "'among the circumstances usually relied upon to establish the *animum manendi* are: declarations of the party; the exercise of political rights; the payment of personal taxes; a house of residence and a place of business,'" and says "certainly these were facts which stood out very clearly in favor of the New Jersey residence."

The facts are summarized in the opinion of the Vice-Ordinary. He says:

> "It is difficult, if not impossible, to conceive of a case in which the items of evidence in this behalf could be more numerous" (*R. 92*).
>
> "It results therefore that he never acquired a legal domicile in Pennsylvania; that he never lost his legal domicile in New Jersey" (*R. 93*).

The Important Decisions.

Among the cases discussed by Kennan (pp. 742-764) are several that closely resemble the present. See *Newcomb's Estate*, 192 N. Y. 238; where decedent had consistently declared her residence to be in New Orleans although she spent only 200 days there and 600 days in New York City, subsequent to her declarations. The court held that she had a right to choose her residence as between New Orleans and New York; *Re Norton*, 96 N. Y. Misc. Rep. 152, 159 N. Y. S. 619; aff. 175 App. Div. 981, 162 N. Y. S. 1133; *Green's Estate*, 99 N. Y. Misc. Rep. 582, 164 N. Y. S. 1063, aff. 179 App. Div. 890, 165 N. Y. S. 1088; *Barbour's Estate*, 185 App. Div. 445; 173 N. Y. S. 276, aff. 226 N. Y. 639, where the New York courts held that William Barbour was domiciled in New Jersey, chiefly on the proof of his filing federal income tax returns in New Jersey; having been a congressional candidate and a member of

the Governor's staff in that state, although he had a winter residence in New York City where he lived with his family.

Out of the multitude of other decisions the following are listed because they are similar in many respects to the present case:

U. S. Supreme Court.

Shelton v. *Tiffin,* 6 Howard 163, 185;
Ennis v. *Smith,* 14 How. 400.
Pennsylvania v. *Ravenel,* 62 U. S. 103;
Mitchell v. *U. S.,* 88 U. S. 350 (1874);
Desmare v. *U. S.,* 93 U. S. 605 (1877);
Chicago & N. W. R. R. Co. v. *Ohle,* 117 U. S. 123 (1885);
Penfield v. *Chesapeake & S. W. R. Co.,* 134 U. S. 351;
Anderson v. *Watt,* 138 U. S. 694 (1890);
Sun P. & P. Assn. v. *Edwards,* 194 U. S. 377;
Williamson v. *Osenton,* 232 U. S. 619;
Jones v. *League,* 59 U. S. 76 (1855);
Morris v. *Gilmer,* 129 U. S. 315;
The Venus, 8 Cranch 251.

New Jersey Cases.

Duke v. *Duke,* 70 N. J. Eq. 135;
Watkinson v. *Watkinson,* 68 N. J. Eq. 632;
In re Russell, 64 N. J. Eq. 313;
Brown v. *Brown,* 112 N. J. Eq. 600.

Pennsylvania Cases.

Guier v. *O'Daniel,* 1 Binn. 349;
In Re: Will of Harbarger, 13 Phila. Rep. 368;
Dalrymple's Estate, 215 Pa. 367;
Carey's Appeal, 75 Pa. 201 (1874).

Cases in Other States

Re Frick's Estate, 116 N. Y. Miscl. 488; 190 N. Y. S. 262;

People v. *Acritelli*, 110 N. Y. Supp. 430;

McCord v. *Rosene*, 39 Wash. 1; 80 Pac. 793;

Estopinal v. *Michel*, 121 La. 879 (46 So. 907);

Pickering v. *Winch* (Reed's Will), 48 Ore. 500, 87 Pac. 763.

Trowbridge Case.

At page 89 of the brief of appellants, is cited the case of *In the Matter of the Estate of James A. Trowbridge*, 266 N. Y. 283. (Also entitled *The State of Connecticut* v. *The State Tax Commission of the State of New York;* also reported in 194 N. E. 756.

The brief states that the case is mentioned "because its facts are almost identical with those of the present case."

The brief then summarizes the evidence in that case on the question of domicil as follows:

> "There the decedent had voted in New York, attended business there almost daily and had investments largely in its bonds and bonds of its municipalities, declared in his will and in innumerable other documents that he was a resident of New York, and in general unquestionably desired to be, and, relying upon the legal advice of his counsel, believed that he was, legally domiciled in New York."

This summary is so incomplete that we deem it appropriate to quote at length from the opinion of the New York Court of Appeals, beginning at page 289 of 266 N. Y., for the purpose of showing the *actual* facts as set forth in the court's opinion, including the comments of the court thereon.

> "Mr. Trowbridge was born at New Haven, Connecticut, June 6, 1843. He was reared and edu-

cated there. In early manhoood he became associated with a banking firm in the City of New York. That association continued until he retired from active business in 1902. In 1884 he acquired a residence property at 57 East Thirty-fourth street in the city of New York which remained in his ownership at his death. This was the principal Trowbridge family establishment, at least until 1890. Thereafter the family spent the summer each year at Noroton, Connecticut, until Mr. Trowbridge in 1904 purchased a substantial residence there which admittedly was his domicile in 1921 when it was razed by fire. It has been held below that Mr. Trowbridge then changed his domicile from Connecticut to the city of New York and kept it there to his death. This finding is the crux of the controversy.

In 1921 Mr. Trowbridge was seventy-eight years of age. His active business life had ended years before. At once he planned to replace the Noroton family headquarters which fire had destroyed. A new habitation on the same site was completed in 1924 at a cost of half a million dollars. By this structure the man sought to express himself. He embellished it with the family crest and coat of arms. The findings are that he 'took a personal pride in having his family circle about him at the house he had built. * * * He had engraved in the stone mantelpiece above the fireplace in the dining room the inscription *'O noctes cenaeque deum quibus ipse meique ante larem proprium vescor'* ('O nights and feasts of the gods which I and mine enjoy before our own hearthstone'). * * * This family home was the center of family reunions on numerous occasions. * * * He had built therein a large play room so that his grandchildren as well as his grandnephews and grandnieces, near neighbors of his * * * would have an appropriate place to play. * * * He was interested in his flowers, his garden and his trees. * * * He took pleasure in running his home, and was distinctly a home man.'

Mr. Trowbridge and his immediate family, his wife and an unmarried son, lived in the new mansion from its completion in 1924 to his death on May 30, 1931. *During that period the house in the city of New York was unused and boarded up. Telephone service there was discontinued.* Furnishings and silver were removed to the Noroton household. In the last six years of his life Mr. Trowbridge spent the night under that roof on all but twenty-one occasions. In 1930 he declared in casual conversation with a friend and neighbor that his home was in Connecticut and that he was going to stay there; *that he had closed his town house and never expected to go back to it.* The learned referee says in his opinion:

'From about November, 1924, decedent and his family lived at the new house at Noroton exclusively.' Such, in substance, is the case made by the State of Connecticut.

After his retirement from active business in 1902, Mr. Trowbridge had desk room in an office at 71 Broadway in the city of New York where he attended almost daily until his death. His investments were largely in bonds of this State and its municipalities. Tax problems persuaded him to have the advice of a lawyer during 1921. He was told 'that it was mainly a matter of intention of the man himself, and that the first thing to do was to describe himself in all writings and instruments as a resident of the State of New York.' Consistently thereafter that counsel was repeatedly followed. The numerous documents in which Mr. Trowbridge characterized himself as residing in the city of New York need not be listed. It is the admitted fact that he desired to have his 'residence' in that city after 1921.

In 1921 and thereafter, except 1925 and 1930, he registered and voted in the city of New York as a resident of 57 East Thirty-fourth street, Manhattan. On October 15, 1921, he filed a verified statement with the Connecticut tax authorities as a nonresident of that State, a declaration of status never withdrawn. Later he requested the tax authori-

ties of the city of New York to transfer his name to the resident tax roll for Manhattan, upon which he was entered accordingly from 1924 to 1930, inclusive, as residing at 57 East Thirty-fourth street. On October 15, 1929, he submitted to the same authority an affidavit asserting that his taxable personal property within this State did not exceed one thousand dollars in value and that his residence was at 57 East Thirty-fourth street. He also said to one of his sons that he was a resident of this State. His will so declares. In substance, such is the proof of the respondent State Tax Commission of this State.

General concepts or definitions of domicile need not now engage us. If at a given time a man exclusively makes his home with his family in a complete domestic establishment, intending so to occupy it for the rest of his days, the place of that habitation is then his domicile, no matter what he may say to the contrary. (*Matter of Roberts*, 8 Paige, 519, 523, 524; *Peterson* v. *Chemical Bank*, 32 N. Y. 21; *Dupuy* v. *Wurtz*, 53 N. Y. 556, 566; *Matter of Harkness*, 183 App. Div. 396.) We have just that case here. Concededly, Mr. Trowbridge actually lived only in his Noroton house for years before his death. His purpose to keep his family settlement there as long as he lived is demonstrated by the accepted evidence. What is there to diminish the force of these dominant facts? Chiefly the declarations made to tax authorities and the periodic voting pilgrimages to the city of New York. These —and again the supporting evidence is undisputed —were all parts of an attempt to vindicate an opinion that a man may retain *an abandoned home* as a technical domicile in law after he has elsewhere established another abode in which he expects to live indefinitely. Doubtless that intention was entertained in good faith and from motives that are beyond criticism; but it is nonetheless irrelevant. (*Chaine* v. *Wilson, 1 Bosw.* 673.) (*See Attorney-General* v. *Yule and Mercantile Bank of India*, (1913) 145 L. T. 9, 17; *Dickinson* v. *Brookline*, 181 Mass. 195, as cited in *National City Bank* v. *Hotch-*

kiss, 231 U. S. 50, 56; *Beale,* 34 Harv. L. Rev. p. 52.) The additional fact that Mr. Trowbridge transacted his limited personal business in this State is unimportant in the circumstances. In *Peterson* v. *Chemical Bank* (*supra*) the question was whether one Cohen at his death had his domicile in the city of New York or in New Haven, Connecticut. In that case, as in this, property and business interests of the decedent were in this State. There it was the fact, as it is here, that the decedent in documents had described himself as of the city, county and State of New York. DENIO, Ch. J., said for this court: 'The evidence was quite conclusive that the domicile of Cohen at the time of his death was at New Haven.' The purchase of an expensive dwelling house for his residence, the measures taken to furnish it with servants, and to repair and supply it with furniture and fuel, and the intention to make it his permanent abode for the remainder of his life *were shown by positive evidence which was wholly uncontradicted.* Upon this evidence there was no question for the jury, and if a verdict had been returned involving a denial of its effect, it would have been at once set aside. If it be conceded that, prior to these acts, and this manifestation of intention, it was equivocal whether his residence was at New York or New Haven, it was no longer so, after he had provided himself with a residence in the latter city, with the absolute determination permanently to occupy it' page 40 of 32 N. Y." (*Italics ours.*)

Some of the significant facts that appear from the foregoing quotation from the opinion are: the decedent was eighty-eight years of age at the time of his death; he had retired from active business 29 years prior to his death; he made his Connecticut residence the "family home," and he and his family, consisting of his wife and an unmarried son, lived in the Connecticut home for seven years immediately prior to his death, during which time the house which he owned in the city of New York was *unused and boarded up,* and during his last six years, de-

cedent spent every night at the Connecticut home except on twenty-one occasions. He had stated that his home was in Connecticut. That he had closed the "town house" and never expected to go back to it.

He maintained a small office in New York City, and occasionally voted there.

The difference in the facts between that case and the present one is obvious.

It is accordingly submitted that the evidence in this record clearly shows that the domicil of decedent was in New Jersey.

This view is forcibly stated at page 41 of executors' brief before this court on their application for writ of certiorari to review the judgment of the Pennsylvania Supreme Court (*Dorrance* v. *Commonwealth*, 287 U. S. 660), as follows:

> "We may state our submission affirmatively by saying that in our view the finding would have been and would be that Dorrance at the time of his death was domiciled in New Jersey if the principles of the common law of domicile as they have been stated by the Supreme Court of the United States had been applied in the instant case. There was a sufficient fact of residence in New Jersey for his domicile to remain there if coupled with an intent to retain New Jersey as his domicile; on the record it is clear that Dorrance's actual and deliberate intention was so to retain his domicile in New Jersey; and the decisions of the Supreme Court of the United States require that such an actual and deliberate intention be given effect."

VIII.

Appellants are estopped from claiming that the domicil of the decedent was in Pennsylvania.

This question was considered in the Prerogative Court. Buchanan, *V. C.*, said:

> "Respondent contends that the appellants are estopped or precluded, for several reasons, from claiming that Dr. Dorrance was not domiciled in New Jersey. It may well be that this contention is sound. Certainly at first impression there would seem to be considerable weight to the argument that the executors, after having claimed by their sworn petition to the Burlington County Surrogate, that Dr. Dorrance was domiciled (resident) in New Jersey; after the adjudication by the Surrogate that he was so domiciled, and the consequent decree probating the will in Burlington County and issuing letters testamentary to these executors (on which letters depends their authority to act in these very proceedings and in the administration of the estate); after they have acted for some two years in administering the estate on the strength of that probate in Burlington County, so procured by them, and have obtained and received from the Burlington County Orphans' Court, allowances of $1,500,000.00 for their services as such executors; after they have, by their original sworn petition to the Tax Commissioner in these proceedings, admitted and asserted that the decedent was domiciled in this State; and after the decedent himself, (the very person whose property is concerned), has asserted in the strongest terms, in the very will which conferred authority on these executors to act as such, that he was domiciled in New Jersey; that the executors should not now be heard or permitted to claim that decedent was not domiciled in New Jersey."
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> *115 N. J. E. 268 at p. 270 (R. 84).*

Decedent's will revokes the appointment of any executor who fails or refuses to probate his will, within 30 days,

before the Surrogate of Burlington County, or the Ordinary of New Jersey and revokes all interest, income or benefit whatsoever of any person who takes, or on whose behalf is taken, any proceedings to prevent the probate of the will as thus directed (*R. 126-9*).

The accountings made by the executors in the Orphans' Court of Burlington County show the following payments, up to November 25, 1932, out of income to Ethel M. Dorrance, one of the plaintiffs in the executors' suit, aggregating $2,225,951.94, and to Elinor Dorrance Hill, plaintiff in the individual suit, aggregating $230,000.00 (*R. 138-142, 145-151*).

The will provides for regular monthly distribution of the income of the estate (*R. 460*), but what further payments have been received by these plaintiffs is undisclosed because no accountings have been filed pending the New Jersey litigation.

The executors have also received counsel fees aggregating $150,000, and executors' commissions aggregating $1,626,594.26 on those two accountings (*R. 143 and 152*), and additional counsel fees of $250,000 included in the decree of the Prerogative Court.

The petition for probate alleges that decedent died at his residence in Cinnaminson Township, Burlington County, New Jersey. On that petition letters testamentary were issued on October 2, 1930. The executors filed their undertaking to truly perform their duties under the will (*R. 129-132*); and duly filed their inventory and appraisal (*R. 135*); they have ever since proceeded with the administration of the estate, according to the instructions of the will, under the laws and jurisdiction of the courts of New Jersey, where all of the property of the estate is located. They now appear before this court in their capacity of executors under that will.

They submitted their return for transfer inheritance taxes in New Jersey, stating, under oath, that decedent died a resident of Burlington County, supported by copious representations and proof of decedent's domicil in New Jersey to the Comptroller and the State Tax Department of New Jersey (*R. 463-7*); and submitted voluminous proof thereof before the Orphans' Court of Delaware County, Pennsylvania, and made that contention before the Supreme Court of Pennsylvania; and later in this Court on petition for certiorari.

Having all occupied intimate relations with decedent for many years and being familiar with his acts, habits and intentions respecting domicil (which are admitted in their brief pp. 8, 14, 100), and having been constantly advised by competent counsel, they knew better than anyone else the facts and circumstances respecting that subject.

The doctrine of estoppel closes the mouths of the executors and forbids them to claim any benefit under the Pennsylvania judgment.

Assuming that the executors did not know, on October 1, 1930, when they filed their petition for the probate of decedent's will, that the Commonwealth of Pennsylvania claimed an inheritance tax upon his estate on the ground that he was domiciled in Pennsylvania, they did know it at least as early as May 2, 1931 (*R. 463*) when the Register of Wills of Delaware County, Pennsylvania, appointed an appraiser of the estate for that purpose.

Nevertheless, they subsequently filed their inventory and appraisal in Burlington County and have ever since continued to administer and distribute the estate under the jurisdiction and orders of that court and to receive allowances of commissions and counsel fees.

From the probate of the will on October 2, 1930, the executors have proceeded with the administration of the

estate in that court; conscious through all this time of the claim of the Pennsylvania authorities that decedent was domiciled in that state.

If the executors had any doubt (even after notice of the Pennsylvania claim to the contrary) that decedent was domiciled in New Jersey, they could have suspended the proceedings in Burlington County Orphans' Court pending the determination of the Pennsylvania litigation, and thus preserved the estate intact; they elected to stand on their conviction, and the advice of their counsel, that decedent was domiciled in New Jersey, where all of his estate was located; where the provisions of the will were lawful, as they were not under Pennsylvania law; and where other advantages existed by which they and the estate benefited.

Having been unsuccessful in their litigation in Pennsylvania they now seek to undo all that has resulted from the order of probate in this state, although they have accepted, and still retain, the fruits of that choice.

They now ask the court to decide that decedent was not domiciled in New Jersey because they were unsuccessful in another litigation. They cannot change their course and profit by their misfortune in that litigation. They desire to try over again the question of decedent's domicil, a question decided on their own uncontradicted representations and proof before the State tax authorities, before the Surrogate on their sworn application for an order of probate and letters testamentary, before the New Jersey Prerogative Court and the New Jersey Supreme Court.

If the assessment is erroneous for the reasons now stated, it is the result of an error of law, or mistake of judgment, of the executors and their counsel. Such grounds are unavailing. *Apgar* v. *Altoona Glass Co.*, 92 N. J. E. 352; *Perrine* v. *White*, 36 N. J. E. 1; aff'd.

McDowell v. *Perrine*, 36 N. J. E. 632; *Warner* v. *Warner*, 31 N. J. E. 549; *In re Roberson*, 95 N. J. E. 672.

In the *Roberson* case the Court of Errors and Appeals reversed a judgment of the Prerogative Court which opened an earlier decree and held:

> "If the unfamiliarity with the evidence was due to lack of diligence on the part of counsel this was the petitioner's misfortune. The mistake of a judge or jury may be a good cause for a new trial, but not the mistake of counsel. *Warner* v. *Warner*, 31 N. J. Eq. 549. If counsel failed to present the case as fully and forcibly as the petitioner would have liked this was a mistake of judgment on the part of the petitioner in selecting counsel. New trials or hearings are not given for errors or supposed errors of judgment made by a litigant in the selection of counsel. If such were the law there would be no end to litigation" (p. 675).
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> * * * * * * * * *
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> "A client is bound by his own mistakes. He is likewise bound by the mistakes of his counsel" (p. 675).

In re Allison, 106 N. J. E. 55 (decided in 1930) (reargument reported, 107 N. J. E. 197) the Prerogative Court considered an application for an order compelling the executors of the will to probate the same in solemn form. Decedent died in 1925 leaving his widow and three children who were the petitioners in that case. The major portion of the estate was left by a residuary clause in trust for public purposes. The will was proved in common form and the executors qualified as executors and trustees and continued thereafter to act as such and to administer the estate according to the terms of the will.

A few weeks after the will was probated one of the daughters filed a bill in Chancery (in which the widow and the other two children joined by answer and counterclaim) admitting said will to be the last will and testa-

ment of decedent and praying that the residuary clause be held invalid (p. 57).

The Vice-Chancellor, who heard the case, held the residuary clause to be invalid and directed the executors to make distribution of the residuary estate among the widow and children.

That decree was reversed by the Court of Errors and Appeals, and an application to the Supreme Court of the United States for writ of *certiorari* to review that order of reversal was denied (p. 58).

After that litigation had been terminated adversely to the petitioners, they made application to compel the probate of the will in solemn form, alleging lack of testamentary capacity of decedent. The Prerogative Court found that petitioners knew the contents of the will, and the lack, if any, of testamentary capacity of the decedent before the will was offered for probate, and that they could have, at that time, contested its validity on that ground, or for any other reason, if they saw fit to do so (p. 59).

The court held that by admitting the will for the purpose of prosecuting their suit in Chancery they were estopped from later contending that the will was invalid.

The court then reviewed the authorities holding, in substance, that a party cannot take inconsistent positions with reference to the same identical matter or thing, saying (pp. 63-4):

> "Applying the principles, as expressed in the foregoing cases, to the facts and circumstances as they exist in the case at bar, I am satisfied, to say the least, that it would be both inequitable and improper to now permit the petitioners to deny the due making, &c. of this will, especially in view of their solemn admissions to the contrary in the prior chancery suit. *Nor does the fact that said prior suit*

terminated adversely to the petitioners, afford any reason or justification for permitting them to do so. For me to hold otherwise, would be tantamount to relieving the petitioners from the binding effect of their respective admissions, solemnly made in order to induce the court of chancery to assume jurisdiction of and to determine said case, so as to now enable them to contest the very facts which they, by their said admissions, had previously conceded. Thus they, by sanction of this court, would be permitted to play fast and loose with the court of chancery and this court, and they would be permitted to here assume a position entirely different from and inconsistent with that taken by them in the court of chancery with reference to this identical will.

* * * * * * * * *

(p. 64)

"To permit litigants to play fast and loose with the courts, is to strike at the very foundations and bulwark of our entire system of jurisprudence and the due and orderly administration of justice. To permit such would be to subvert the preservation of the public security and repose which requires that an end be brought to all litigation. For me to grant the petitioners' present application would be to ignore these wholesome and well-established principles and to encourage endless litigation. Such a situation, it is needless for me to say, is repulsive and abhorrent to our plainest principles of justice and the due and orderly administration thereof. All the authorities in well-defined and unmistakable language have condemned such a condition."

The *Allison* case bears strong resemblance, in principle, to the present case. Although the subject-matter was different, it clearly establishes the doctrine of estoppel. These executors do not allege that they, or anyone else, were wronged by the assessment (except, now, on account of the Pennsylvania decision). On the contrary they have accepted the fruits, and have acted, *and are now acting,*

under authority of their orders of probate, for several years in the administration and distribution of the estate, and are, therefore, estopped from now claiming adversely.

Many other cases are found in the reports in which the same principle has been applied.

Hill v. *Phelps,* 101 Fed. 650;

Hoffman v. *Norris,* Prerog. Hil. Term (1805), 2 Phillim. Eccl. Rep. 224, note; 40 *Cyc.* 1236, 1893, 1895, 1896;

Van Duyne v. *Van Duyne,* 14 N. J. E. 49;

Stevenson v. *Brown,* 4 N. J. E. 503;

In re Leupp, 108 N. J. E. 49;

Murray v. *Lynch,* 64 N. J. E. 290;

Bender v. *Bateman,* 33 Ohio App. 66; 168 N. E. 574;

In re Cronin's Will, 257 N. Y. Supp. 496;

Fishburn v. *Green,* 291 Ill. 350; 126 N. E. 115;

Meyers v. *Kooke,* 126 Atl. 710 (Md.);

King v. *Rockwell,* 93 N. J. E. 46;

In re Hickman's Estate, 308 Pa. 230; 162 Atl. 168;

Schmidt v. *Johnston,* 140 Atl. 87;

Safe Deposit and Trust Company v. *Hanna,* 150 Atl. 870;

In re Richardson's Will, 30 N. Y. Supp. 1008;

In re Peaslee's Will, 73 Hun. 113; 25 N. Y. Supp. 940;

In re Soule, 3 N. Y. Supp. 259;

Mills v. *Hoffman,* 92 N. Y. 181;

Paxton v. *Brogan,* 12 N. Y. Supp. 563;

In re Ruppaner's Will, 37 N. Y. S. 429; aff. 41 N. Y. S. 212;

Eysaman v. *Nelson,* 140 N. Y. Suppl. 183, 208;

Chipman v. *Montgomery,* 63 N. Y. 221.

One of the executors, Mrs. Dorrance, is estopped from alleging that decedent was domiciled in Pennsylvania by her agreement of January 11, 1926, with decedent

(*R. 466*). All of them are estopped by the express instructions of the will and the benefits they have accepted under its provisions and the orders of the Burlington County Orphans' Court. In the opinion of their counsel, the facts submitted with his letter of May 2, 1931 to the Comptroller of New Jersey "conclusively show decedent's legal residence to be in New Jersey" (*R. 464*). In his advice to decedent about retaining his citizenship in New Jersey at the time of the purchase of the Radnor house, and also with respect to the domicil agreement of January 11, 1926, and the several powers of attorney and other legal documents which were prepared by him as decedent's counsel, and in his testimony, he acted in the strictest sincerity. And the same is true of the executors who testified in the case in Pennsylvania. Undoubtedly they all still believe exactly as they did then, yet their attitude is now changed; not because they believe differently, but because they were unsuccessful in sustaining that belief in the courts of another state where they paid the tax, and now allege that decedent is domiciled in Pennsylvania *for the sole purpose of avoiding the payment of a tax in New Jersey*, and for that purpose they are willing to destroy the will and forfeit their position as executors thereunder; for the contention they now made here is equivalent to a refusal to probate the will in New Jersey in violation of the thirty-third paragraph thereof. It is the duty of every court to protect and support the intention of a testator as expressed in his will. The contention which the executors now make is *ultra vires*. They are decedent's representatives. His will is their law. It is their duty to execute the whole of that will. Their powers are derived exclusively from it and they are legally incapable of doing anything contrary to or beyond the authority therein conferred. *Fenwick* v. *Chapman*, 9 Peters 461; *Bank of U. S.* v. *Beverly*, 1 Howard 134, 150; *Pulliam* v. *Pulliam*, 10 Fed. 23, 45; *Brush* v. *Ware*, 15 Peters 93, 111.

They cannot act otherwise than the will directs or swerve from its instructions.

> "To assume such a power themselves was unjustifiable, and to sanction it would be to say that they may set the will aside, and do what they themselves think expedient or proper. The law gives them no such power, nor ought they to possess it. Neither they nor we can destroy the will." *Covenhoven* v. *Covenhoven*, 1 N. J. L. 243 (210), 245.

It is the duty of the court to enforce the provisions of the will, regardless of what the executors may think or do to the contrary. *Hutton* v. *Hutton*, 41 N. J. E. 267, 271; *Bender* v. *Bateman*, 33 Ohio App. 66, 168 N. E. 574, 575.

That duty is emphasized in this case by the fact that decedent's will is valid under the laws of New Jersey, but is invalid under the laws of the Commonwealth of Pennsylvania.

The following extracts from Bigelow on Estoppel apply:

Chapter XX. Election and Inconsistent Positions Generally. Section 1. Election. p. 732.

> "A party cannot either in the course of litigation or in dealings in pais occupy inconsistent positions. Upon that rule election is founded; 'a man shall not be allowed,' in the language of the Scotch law, 'to approbate and reprobate.' And where a man has an election between several inconsistent courses of action, he will be confined to that which he first adopts; the election, if made with knowledge of the facts, is in itself binding,—it cannot be withdrawn without due consent; it cannot be withdrawn though it has not been acted upon by another by any change of position."
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> * * * * * * * * *
>
> (p. 733)
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> "With regard to the facts which require an election the most familiar statement of the doctrine

is found in the law of wills. It is laid down, (rather too broadly, it seems) as an old rule of equity that a person who has taken a beneficial interest under a will is thereby held to have confirmed and ratified every other part of the same, and he will not be permitted to set up any right or claim of his own, however legal and well founded it may otherwise have been, which would defeat or in any way prevent the full operation of the will."

(p. 739) "Thus, one who takes possession of property under a will, and holds and manages it for a long time, and especially if he sell the whole or part of it, will be considered to have made a binding election to accept that property upon the terms of the will."

* * * * * * * * * *

Section 2. Inconsistent Positions Generally (p. 744).

"Under a principle similar to that applied to persons taking under wills, beneficiaries under a trust are estopped, by claiming under it, to attack any of its provisions. The same is to be said, on still stronger grounds, of the trustee; and in general, persons accepting and holding lawful posts of duty are similarly estopped while holding the post, or while retaining the emoluments or benefits of it."

The executors (and, Elinor Dorrance Hill, one of the beneficiaries) under the will are further estopped by reason of the opening of the New Jersey assessment, on the petition of the executors after the amount of the assessment and the taxes thereon have been determined by the Inheritance Tax Bureau of New Jersey.

The assessment was first made October 17, 1931 (*R. 468,*). It was based upon two verified returns made on behalf of the executors and a vast amount of data, documents, proof and statements furnished to the State taxing officers by and on behalf of the executors, and thereafter an express finding of fact of decedent's domicil

in New Jersey was made by the Comptroller. Under the statute an appeal is allowed within 60 days of making the assessment. On December 4, 1931 (*R. 470*), the executors filed with the Tax Commissioner a petition verified by their proctor, reciting the death of decedent, the probate of the will in Burlington County, the filing of their inheritance tax returns in New Jersey, and the assessment of October 17, 1931. They also recited an appraisement by the State of Pennsylvania on the claim of that state that decedent died domiciled therein, and an appeal from that assessment and the trial thereof before the Orphans' Court of Delaware County, where a large amount of testimony was presented respecting the domicil of decedent. They refer to the evidence of domicil which they had previously submitted to the New Jersey taxing authorities and say that subsequently thereto a large amount of additional information, facts and evidence on that subject had been collected which they desire to submit to the New Jersey authorities, for consideration before final action upon the New Jersey assessment. They ask that the assessment of October 17, 1931 be opened, set aside and cancelled, and that the proceedings thereon be opened for the submission of the additional proof (*R. 470-3*).

Acting on the good faith of the executors, and suspecting no change of attitude or intention on their part, the Tax Commissioner granted their petition on December 12, 1931, and opened, set aside and cancelled the assessment to permit them to submit the proposed *additional* proof (*R. 473*).

In acknowledging the letter transmitting that order, their counsel stated that the additional evidence to be submitted would consist of the evidence presented before the Orphans' Court of Delaware County, Pennsylvania, on the appeal from the Pennsylvania appraisement, and that evidence was submitted on March 7, 1932,

together with a copy of the decision and decree of that court setting that appraisement aside and holding that decedent was domiciled in New Jersey (*R. 473-4*).

It later appeared that the real reason for desiring respondent to set aside the assessment of October 17, 1931, was to avoid appealing from that assessment by December 17 of that year, while their contest in Pennsylvania was still pending. There was no dispute about the assessment now under review, with respect to rates, computations or amount, and the only ground upon which they could have rested such an appeal was the contention that decedent *was not* domiciled in New Jersey, which would have been a very embarrassing contention for them to make while they were contending in Pennsylvania that decedent *was* domiciled in New Jersey. The purpose of setting aside the assessment was therefore one of benefit and accommodation to them and their petition did not disclose any doubt or question of decedent's domicil in New Jersey that would put the New Jersey officers on notice that the order to open or set aside the assessment would be used to the advantage of the plaintiffs and to the disadvantage and prejudice of the State of New Jersey.

In September 1932 the executors filed with the Tax Commissioner a copy of the decision of the Supreme Court of Pennsylvania. Thereupon the Tax Commissioner, on October 10, 1932, reinstated the previous assessment and served notice thereof upon the executors (*R. 474-6*).

It was not until October 12, 1932, that their counsel (or any one else) in acknowledging the notices of assessment of October 10, indicated a change of attitude of the executors, by stating that because of the decision of the Supreme Court of Pennsylvania, the executors would appeal from the New Jersey assessment (*R. 476*).

It is claimed on behalf of the State of New Jersey that the doctrine of equitable estoppel prevents appellants from now claiming the advantage of the opening and setting aside of assessment of October 17, 1931, and from now taking the opposite position that decedent was domiciled in Pennsylvania, and from pleading the judgment of the Supreme Court of that state in justification of that change of position, or from making any claim that might prejudice the rights of the State of New Jersey. We claim that the change of condition resulting from the opening of that assessment was brought about by the design and intention of the executors to protect their contention in the Pennsylvania courts, and that they caused the Tax Commissioner to change his position innocently and without his knowledge of their intention, and that they cannot now plead that the New Jersey assessment was made after the Pennsylvania decision and that it is invalid because decedent was held in a later decision to be domiciled in Pennsylvania.

We claim, also, that the action of the Commissioner in opening the assessment, if error on his part, does not bind the State, since his act is unauthorized and *ultra vires*, and did not in any way affect the obligation of the executors to pay the New Jersey tax.

In *Naumkeag Steam Cotton Co.* v. *United States*, 2 Fed. Supp. 126, decided January 9, 1933, the United States Court of Claims held:

(p. 133)

> " 'The estoppel here relied upon is known as an equitable estoppel, or estoppel in pais. The law upon the subject is well settled. The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden. * * * There is no rule more necessary to enforce good

> faith than that which compels a person to abstain from asserting claims which he has induced others to suppose he would not rely on. The rule does not rest on the assumption that he has obtained any personal gain or advantage, but on the fact that he has induced others to act in such a manner that they will be seriously prejudiced if he is allowed to fail in carrying out what he has encouraged them to expect.'"

* * * * * * * * *

There is present in this case an estoppel *in pais*, by acts and conduct of the executors, inducing the Tax Commissioner to change his position, which in this case precludes them from showing even a real fact or truth. They cannot give evidence by affidavits in this case against their former acts and contentions, even though that evidence were true and otherwise admissible. *Bigelow on Estoppel, p. 4; Coke, Litt. 352a; 3 Blackstone Com. 308; Demarest* v. *Hopper*, 22 N. J. L. 599, 619. In the reference to Coke, it is stated that estoppel applies in such a case—

> "Because a man's own act or acts stoppeth or closeth up his mouth to allege or plead the truth."

The doctrine applied to preclude the executors from upsetting what has been determined on their own representations (*Bigelow, pp. 6, 27*), and that rule applies to the executors to estop them from setting up claims adverse to the will under which they act (*Ibid, p. 27*). It is stated—

> "where a person by his words or conduct causes another to believe in the existence of a certain state of things, and induces him to act upon that belief so as to change his position, he will be estopped to aver against the latter a different state of things."

Estoppel arises from silence or concealment of a fact or intention, as well as from an active conduct (*p. 28*) and a party will not be permitted to assume inconsistent positions; and where one has an election between inconsistent courses of action, he will be confined to that course which he first adopts (*p. 30*).

With respect to judgments of another state Bigelow says:

> "even between parties and privies the recital of a judicial record of another state * * * in respect of jurisdiction are but prima facie evidence" (*p. 36*).

The rights of strangers are not affected; strangers can neither be bound by nor take advantage of the recitals of the record (*p. 35*).

(*p. 603*).

> "Estoppel by representation consists in holding for truth a representation acted upon when the person who made it, or his privies, seek to deny its truth and to deprive the party who has acted upon it of the benefit obtained. The origin of the estoppel is probably to be found in the doctrine of equity that if a representation be made to another who deals upon the faith of it, the former must make the representation good if he knew or was bound to know it to be false. Lord Eldon in the case just cited speaks of this as 'a very old head of equity.' But the principle had been fully adopted at law as ground for an action of deceit several years before this remark was made, and though still called 'equitable estoppel' the estoppel is as fully available at law as in equity.
>
> In order to justify the interposition of equity in the case mentioned it is necessary to establish, not only the fact of misrepresentation or concealment, but also that it has been in a matter of substance or of importance to the interests of the other party, and that it has actually misled him."

If the assessments of October 17, 1931, had not been set aside at the request of the executors, the time for appeal would have expired in 60 days. It is certain, on the face of the executors' representations, that an appeal would not have been taken. If taken, it is inconceivable that, on the record then before the Tax Department, the assessment would not have been sustained.

But, in any event, the appeal would have been decided and the matter disposed of before the Pennsylvania decision of a year later, was rendered.

We do not admit that appellants' present claims are effective to defeat the New Jersey assessment, but if they have merit, they are estopped from asserting them now.

IX.

Interlocutory injunction should not be issued if the questions either of fact or of law are doubtful.

If the questions either of fact or of law are doubtful, interlocutory injunction should be denied.

In *Fleetway, Inc.* v. *Public Service Interstate Transportation Co.*, 4 Fed. Supp. 482, Avis, *D. J.* said:

> "A preliminary injunction should not be granted by a court of equity, unless the right to the relief is clear; and I am constrained to say that I am not satisfied that the facts and law are sufficiently clear to justify me in the issuance of such relief in the instant case.
>
> In addition, I have considerable doubt as to the right of the plaintiff to relief, based upon the general equity principle of the acts and attitude of plaintiff" (p. 484).

In *United States* v. *Republic Oil Refining Company*, 8 Fed. Supp. 897, Forman, *D. J.*, said:

> "Relief by injunction is drastic and will only be granted in extraordinary cases. Curtis Publishing Co. *v.* Federal Trade Commission, 270 F. 881, 914 (C. C. A. 3), Williamson Candy Co. *v.* Ucanco, 297 F. 454 (C. C. A. 8).
>
> The principle is firmly established that whether a preliminary injunction shall be awarded rests in the sound discretion of the trial court. Meccano, Ltd. *v.* John Wanamaker, 253 U. S. 136, 40 S. Ct. 463, 64 L. Ed. 822; Buffington *v.* Harvey, 95 U. S. 99, 24 L. Ed. 381. This discretion must be exer-

cised according to the established law and rules of equity. Behre *v.* Anchor Insurance Co., 297 F. 986 (C. C. A. 2); Kryptok Co. *v.* Stead Lens Co., 190 F. 767, 39 L. R. A. (N. S.) 1 (C. C. A. 8).

It is established that the court will balance the conflicting equities of the parties, and, if it appears probable that the complainant will establish his right on a final hearing, the court will for the time being preserve his apparent right provided that can be accomplished without subjecting the defendant to the danger of greater harm than the complainant will be benefited by the relief. City of Louisville *v.* Louisville Home Telephone Co., 279 F. 949 (C. C. A. 6); Pyle *v.* Texas Transport & Terminal Co. (D. C.) 185 F. 309. But a preliminary injunction will not be granted in a doubtful case; particularly where great damage will not result to the applicant. The right should plainly appear as well as the pressing necessity for the relief. This is true in a case where the proofs leave the court in serious doubt in regard to the right asserted by the complainant (Brooklyn Baseball Club *v.* McGuire (C. C.) 116 F. 782; Sperry & Hutchinson Co. *v.* Pommer (D. C.) 199 F. 309), or where the facts are in serious dispute (Hall Signal Co. *v.* General Railway Signal Co., 153 F. 907 (C. C. A. 2), Southern Counties Gas Co. *v.* City of Long Beach (D. C.) 295 F. 530). If upon examination of the pleadings and affidavits it appears that the complainant has a questionable case, the preliminary injunction ought to be denied and restraining order vacated. Anargyros & Co. *v.* Anargyros (C. C. A.) 167 F. 753." (p. 904).

In any event, interlocutory injunction should issue only in a case where it appears without substantial dispute that without such injunction the plaintiff will suffer irreparable injury, *32 C. J. 36; Kellett* v. *Local No. 274,* 114 N. J. E. 107.

If substantial doubt exists as to the wisdom of a preliminary injunction, that fact is enough to require the court, in its discretion, to withhold it.

The rule that an injunction (either interlocutory or final) should not issue in a doubtful case, is especially applicable to tax cases that involve the collection of public revenue. In that kind of cases it has been repeatedly pointed out that the collection of the public revenue is a matter of such great importance to the state that the courts will interfere with such collection by injunction *only when the right to such relief is clear.*

In *Boise Artesian Co.* v. *Boise City*, 213 U. S. 276, the court said:

> "An examination of the decisions of this court shows that a proper reluctance to interfere by prevention with the fiscal operations of the state governments has caused it to refrain from so doing in all cases where the Federal rights of the persons could otherwise be preserved unimpaired" (*p. 282*).

In *Matthews* v. *Rodgers*, 284 U. S. 521, the court said:

> " 'Section 16 of the Judiciary Act of 1789, 1 Stat. 82, perpetuated without material change as Rev. Stat. sec. 723, Jud. Code sec. 267 (28 U. S. C. sec. 384), declares that suits in equity shall not be sustained in the courts of the United States "in any case where plain, adequate and complete remedy may be had at law." The effect of this section, which was but declaratory of the rule in equity, established long before its adoption, is to emphasize the rule and to forbid in terms recourse to the extraordinary remedies of equity where the right asserted may be fully protected at law. See Deweese *v.* Reinhard, 165 U. S. 386, 389, 17 S. Ct. 340, 41 L. Ed. 757; New York Guaranty Co. *v.* Memphis Water Co., 107 U. S. 205, 214, 2 S. Ct. 279, 27 L. Ed. 484.
>
> 'The reason for this guiding principle is of peculiar force in cases where the suit, like the present one, is brought to enjoin the collection of a state tax in courts of a different, though paramount sovereignty. The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and

a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. * * * If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved, Jud. Code sec. 237 (U. S. C. A. Title 28, sec. 344), or to his suit at law in the federal courts if the essential elements of federal jurisdiction are present.' " (citing cases.) (*p. 525*).

The annotations at the foot of that decision, as reported in 76 L. ed., p. 455, contain many more cases in point; the annotator summarizes the rule as follows:

"In the Federal and in some of the state courts the rule is followed that the unconstitutionality of a tax is not in itself sufficient ground for the issuance of an injunction against enforcement procedure; but that to warrant injunctive relief additional circumstances must appear bringing the case within some recognized head of equity jurisdiction, such as the prevention of a multiplicity of suits or actions."

In *Hawks* v. *Hamill*, 288 U. S. 52, the court said:

"There is another path of approach that brings us to the same goal, an approach along the line of the law of equitable remedies. Caution and reluctance there must be in any case where there is the threat of opposition, in respect of local controversies, between state and federal courts. Caution and reluctance there must be in special measure where relief, if granted, is an interference by the process of injunction with the activities of state officers discharging in good faith their supposed official duties. In such circumstances this court has said that an injunction ought not to issue 'unless in a case reasonably free from doubt.' " (citing cases.)

"The rule has been characterized as an 'important' one, to be 'very strictly observed' " (citing

cases). "It is such interference by the process of injunction with the activities of state officers that the respondents now seek. The members of the State Highway Commission believe it to be their official duty to take possession of the bridge, and propose to act accordingly. The Attorney General of the state is about to institute proceedings at law and in equity to vindicate the public rights or what he believes to be such rights. The County Attorneys of the McClain and Cleveland Counties propose to sue for fines and penalties. All these activities the respondents ask us to enjoin. Indeed all have been enjoined by the decree under review. Only a case of manifest oppression will justify a federal court in laying such a check upon administrative officers acting *colore officii* in a conscientious endeavor to fulfill their duty to the state. A prudent self-restraint is called for at such times if state and national functions are to be maintained in stable equilibrium. Reluctance there has been to use the process of federal courts in restraint of state officials though the rights asserted by the complainants are strictly federal in origin" (*p. 60*).

The reluctance of Federal Courts to interfere by injunction with the action of state officers in the collection of taxes, is further illustrated by the case of *Chicago Great Western R. Co.* v. *Kendall*, 266 U. S. 94, 98, 99, where the court said (italics ours):

"The averments of both bills make a case of unjust discrimination against complainants' property in that there is an intentional systematic under-valuation by state officials of Iowa of other taxable property of the same class, when the complainants' property is assessed and taxed at a much higher rate. In such cases, the Federal authorities render it clear that the complainants may have the remedy by injunction in equity to prevent the taxation of their property at any higher rate than that imposed upon the property of those in whose favor the discrimination exists.

> (Citing cases.) It is not enough, in these cases, that the taxing officials have merely made a mistake. It is not enough that the court, if its judgment were properly invoked, would reach a different conclusion as to the taxes imposed. *There must be clear and affirmative showing* that the difference is an intentional discrimination, and one adopted as a practice."

Again, same case at p. 100:

> "It would take a very clear case upon the record to justify this court in setting aside the conclusion of a court of three judges under section 266 upon what is solely a question of fact and an exercise of sound judicial discretion as to the just balance of convenience in granting or withholding a temporary suspension of the operation of a state law in the collection of taxes. *This court must respect in the fullest degree the sensitiveness of Congress in hedging about the sovereign power of taxation by the states, and precluding temporary Federal judicial interference with it save in clear cases.*"

In the present suits the bills allege, and their brief states (*p. 18*), that if the appellants pay the tax it will be the duty of the Tax Commissioner to pay the same to the treasurer of the State, and that it will be the duty of the latter to apply $10,000,000. of the amount of the tax to the redemption of bonds issued under authority of *Chapter 255, New Jersey Laws of 1934.*

The latter allegations and statements are not correct. Under said statute the money received by virtue of the collection of this tax is only one of several sources wherewith the State of New Jersey has provided funds to meet the principal and interest of the bonds issued pursuant thereto.

These bonds were issued for the relief of the unemployed and dependents in the State of New Jersey.

The fact that one of the means provided by the Legislature for the payment of principal and interest thereof is the very tax that is now in litigation, is a significant circumstance to be considered by the court in deciding whether an interlocutory injunction should issue; the provisions of that statute emphasize the importance of giving pause to any suggested interference with the collection of state revenues in the normal course of the enforcement of state statutes.

To summarize:

We submit that both on questions of law and on questions of fact, the right of the appellants to an interlocutory injunction is, to say the least, extremely doubtful; relief of this character should be granted only in extraordinary and clear cases.

The existence of a substantial doubt, either of law or of fact, requires the denial of the writ—particularly in cases that involve the collection of the public revenues.

CONCLUSION.

While the court below rested its decree chiefly upon its decision that Section 265 of the Judicial Code forbade the issuance of injunctions in the present cases, those decrees are equally sustainable on any other valid ground, even though not assigned in the court's decision. For this reason, while we have discussed as Point I the ground assigned in the decision of the court below, we have added Points II to IX, inclusive, as additional grounds upon which those decrees are sustainable—even if this court should not agree with the court below on the ground assigned in its decision.

The decrees of the court below, denying the prayer for interlocutory injunction, should be affirmed.

Respectfully submitted,

DAVID T. WILENTZ,
Attorney General,
Solicitor for Appellees.

DUANE E. MINARD,
GEORGE S. HOBART,
Of Counsel.

November 11, 1935.

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Supreme Court of the United States

OCTOBER TERM, 1935.

ELINOR DORRANCE HILL, *Appellant,* *vs.* J. H. THAYER MARTIN, *et als.,* *Appellees.*	*No. 193.*
ETHEL M. DORRANCE, *et als.,* *Appellants,* *vs.* Same, *Defendants.*	*No. 194.*

Supplement to Brief on Behalf of Appellees.

At the request of the court on the argument of these cases (Nov. 11, 1935) appellees submit the following citations of decisions of the New Jersey Court of Errors and Appeals on its power to review questions of fact on appeal from the New Jersey Supreme Court:

1. Cases declaring that power:
   Jordan v. *Borough of Dumont,* (1928) 105 N. J. Law 197, 198 (citing 7 previous decisions);
   Harman v. *Reed,* (1931) 108 N. J. Law 191, 194.

2. Case exercising that power:
Central R. R. Co. of N. J. v. *State Tax Dept.* (a tax case), 112 N. J. Law 5.

Respectfully submitted,

DAVID T. WILENTZ,
Attorney General,
Solicitor for Appellees.

DUANE E. MINARD,
GEORGE S. HOBART,
Counsel.

November 13, 1935.

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SUPREME COURT OF THE UNITED STATES.

Nos. 193 and 194.—OCTOBER TERM, 1935.

Elinor Dorrance Hill, Appellant, 193 *vs.* J. H. Thayer Martin, State Tax Commissioner, et al.	Appeals from the District Court of the United States for the District of New Jersey.
Ethel M. Dorrance, et al., Appellant, 194 *vs.* J. H. Thayer Martin, State Tax Commissioner, et al.	

[December 16, 1935.]

Mr. Justice BRANDEIS delivered the opinion of the Court.

These suits were brought, on April 1, 1935, under Section 266 of the Judicial Code, to enjoin the collection of an inheritance tax in the sum of $12,247,333.52, assessed by New Jersey upon the estate of John T. Dorrance which was valued at more than $115,000,000. The bills charge that its transfer inheritance tax act, as construed and applied, violates the full faith and credit clause of the Federal Constitution and the due process clause of the Fourteenth Amendment. The defendants are the State Tax Commissioner and other New Jersey officials.[1] In No. 193, the plaintiff is a daughter of the decedent and a beneficiary under his will. In No. 194, his executors are the plaintiffs. A temporary restraining order issued. An application was made for an interlocutory injunction; answers were filed; and the case was heard before three judges upon an elaborate record. But the injunction was denied for want of jurisdiction upon the allegations of the bill, because of the prohibition contained in Section 265 of the Judicial Code.[2] — F. Supp. —. The cases are here on appeal.

[1] These are the State Supervisor of the Inheritance Tax Bureau, the Comptroller of the State, the State Treasurer, and the Attorney General.

[2] Section 265 provides: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." See Smith *v.* Apple, 264 U. S. 274.

The material allegations are substantially the same in the two suits: Dorrance died on September 21, 1930, at his residence in Cinnaminson, Burlington County, New Jersey, leaving a will in which he named his wife, two brothers, and the Camden Trust Company executors. On October 2, 1930, his will was, upon petition of the executors, admitted to probate in the Orphans' Court of that county; letters testamentary issued; and the executors have administered the estate ever since under the jurisdiction of that court. Their petition for probate, like the will, had recited that Dorrance's domicil was in New Jersey. On April 6, 1931, they filed with the Inheritance Tax Bureau of New Jersey their return as a basis for the assessment of the inheritance tax. The estate consisted almost wholly of bonds, stocks, and other evidence of title to intangible personal property; and these were then, and still are, located in New Jersey. On October 17, 1931, the Tax Commissioner, finding, upon evidence presented by the executors, that Dorrance was at the time of his death domiciled in New Jersey, assessed the amount stated as the tax on direct transfers payable under the New Jersey Transfer Inheritance Tax Act of April 20, 1909, ch. 228, as amended.

On December 12, 1931, the assessment so made was, upon request of the executors, opened for the purpose of enabling them to submit additional information concerning the decedent's domicil; and, introducing in evidence the judgment of the Supreme Court of Pennsylvania hereafter referred to, first rendered September 26, 1932, they claimed that Dorrance was, or must be deemed to have been, domiciled in Pennsylvania, in view of that judgment and other evidence. On October 10, 1932, the New Jersey Tax Commissioner again assessed upon the estate the tax of $12,247,333.52. The executors appealed to the Prerogative Court, which, by final decree entered May 11, 1934, affirmed the assessment, subject to a modification not here material. *In re Dorrance,* 115 N. J. Eq. 268; 116 N. J. Eq. 204. The executors procured, by writ of certiorari, a review of the assessment by the New Jersey Supreme Court. On February 8, 1935, that court affirmed the decree of the Prerogative Court and dismissed the writ of certitorari with costs. *Dorrance* v. *Thayer-Martin,* 13 N. J. Misc. Rep. 168. On February 13, 1935, the executors notified the defendant Martin that they intended to take an appeal to the New Jersey Court of Errors and Appeals.

They have not done so; but under the state practice an appeal may be taken at any time prior to February 11, 1936.[3]

Dorrance had a residence also in Pennsylvania. That State claimed that he was domiciled there at the time of his death; and promptly commenced proceedings to subject his estate, including the intangible property, to the Pennsylvania inheritance tax. In March, 1933, it recovered in its Supreme Court a final judgment against the executors which, adjudging that Dorrance's domicil was at the time of his death in Pennsylvania, imposed an inheritance tax upon the intangible property, as well as upon the real estate and tangible personal property situated there. *Dorrance's Estate,* 309 Pa. 151. No question under the Federal Constitution was presented. Certiorari was denied by this Court, 287 U. S. 660; 288 U. S. 617. In satisfaction of the judgment, the executors paid to Pennsylvania $14,394,698.88, and $104,278.03 as interest thereon; and they also gave a bond in the sum of $4,000,000 to pay additional amounts, if upon final determination of the federal estate tax they should appear to be due.

In the suits at bar, the plaintiffs insist that the Pennsylvania judgment was *in rem* and bound New Jersey and the defendants although they were not parties to that litigation; that the New Jersey courts and administrative authorities, in refusing to give effect to the Pennsylvania judgment holding that Dorrance was domiciled in the latter State, violated the full faith and credit clause of the Federal Constitution; and that if they construed the New Jersey Transfer Inheritance Tax Act as applying to intangible property the situs of which was outside New Jersey, they violated the due process and equal protection clauses of the Fourteenth Amendment. The plaintiffs contend further that if the Pennsylvania judgment is not *in rem,* the federal court is now free to ascertain the facts as to domicil and reach its conclusion independently of the prior decisions of the courts of the two States; and that the evidence introduced below establishes that Dorrance's domicil was in Pennsylvania.

The plaintiffs claim that the District Court erred in holding that Section 265 of the Judicial Code prevents the federal court from granting the injunctions prayed for, since at the time of the institution of these suits in the federal court the proceedings

[3] 2 Comp. Stats. of N. J. of 1910, p. 2208, sec. 2; 2 Cum. Supp. of 1924, p. 2818, sec. 163-301.

in New Jersey had not passed into the judicial stage; and since, in any case, an independent judicial proceeding was necessary to collect the tax. The defendants concede that Section 265 would not bar federal courts from staying collection of the tax if the state proceedings had not passed from the administrative into the judicial stage. See *City Bank Farmers Trust Co.* v. *Schnader,* 291 U. S. 24; 293 U. S. 112. But they assert that the proceedings in the Supreme Court of New Jersey reviewing by certiorari the final decree of the Prerogative Court (itself a judicial tribunal) were proceedings judicial in their nature; and that the stay sought is of proceedings pending in a court of New Jersey. The defendants contend also that the judgment of the New Jersey Supreme Court to which the executors were parties is *res judicata* as to the domicil of the deceased and as to the liability of the estate for the taxes assessed by New Jersey; and they set up other reasons why the relief prayed should be denied. We have no occasion to consider any of these defenses, since we agree with the District Court that it was without jurisdiction to grant the injunction.

First. To determine whether a judicial proceeding was pending when these suits were brought, we turn to the law of New Jersey. The proceedings, administrative and judicial, governing the assessment and the collection of its inheritance tax are, in substance, these: The assessment is made by the State Tax Commissioner, his duty being to "assess and fix the cash value of such estate and levy the tax to which the same is liable." He performs this duty after receiving the report of an appraiser appointed by him. The appraiser makes the appraisal and essential findings after notice to the interested parties and hearing evidence and argument.[4] Any person dissatisfied with the appraisal or the assessment may appeal therefrom to the "Ordinary", that is, the Prerogative Court. *Bugbee* v. *Van Cleve,* 99 N. J. Eq. 825, 834. Upon that court is conferred jurisdiction "to hear and determine all questions in relation to any tax levied under the provisions of" the Act.[5] The decree of the Prerogative Court is reviewable on writ of certiorari by the New Jersey Supreme Court;[6] and its judgment is reviewable by the Court of Errors and Appeals.[7]

[4] N. J. Laws of 1931, ch. 303, sec. 18, pp. 763, 764; ch. 336, p. 823.
[5] N. J. Laws of 1909, sec. 20, p. 335.
[6] See In re Roebling's Estate, 91 N. J. Eq. 72, 75.
[7] See Central R. R. Co., etc., *v.* State Tax Department, 112 N. J. Law 5.

As to the collection of the tax, Section 21 of the Transfer Inheritance Tax Act provides that "if it shall appear to the State Tax Commissioner that any tax . . . has not been paid according to law", he shall report such fact to the register of the Prerogative Court, who must issue a citation citing the interested parties to "show cause why such tax should not be paid."[8] The Attorney General, if he has probable cause to believe that a tax is due and unpaid, and is so notified by the Commissioner, shall prosecute the proceeding before the Prerogative Court.[9] The service of the citation, and subsequent proceedings thereon, shall conform to the practice prevailing in the Prerogative Court, including the power to commit for contempt.[10] Such proceedings would be the same in character whether the review of the original assessment had ended with the appeal to the Prerogative Court, or had been followed by certiorari to the Supreme Court; and whether or not an appeal was taken from the judgment of the Supreme Court to the Court of Errors and Appeals. Upon the making by the Prerogative Court of any decree, a copy thereof filed by the Commissioner with the clerk of the Supreme Court has the same effect as a judgment at law, and execution may issue thereon.[11] Thenceforward, collection is pursued as prescribed for civil judgments in "an Act respecting executions." 2 Comp. Stats. of N. J. of 1910, p. 2243. Paragraph Fifth of Section 1 of the Inheritance Tax Act provides that under certain conditions executors (and others) "shall be personally liable for any and all such taxes until the same shall have been paid as hereinafter directed, for which an action of debt shall lie in the name of the State of New Jersey."

Second. The Supreme Court's review of the administrative act of assessing was judicial action. It is a court created by the constitution; and its jurisdiction to review, on certiorari, proceedings of inferior tribunals is an inheritance from the Court of Kings Bench. The Supreme Court has broad powers. It may, as recited in the New Jersey Certiorari Act of 1903, as amended, "determine disputed questions of fact, as well as of law"; and when inquiring into the facts, is not limited to the evidence introduced before the

[8] N. J. Laws of 1931, sec. 21, pp. 764, 765.
[9] *Id.*, sec. 22, p. 765.
[10] N. J. Laws of 1900, ch. 148, p. 347; see note 14.
[11] N. J. Laws of 1902, ch. 158, sec. 44, pp. 524, 525; N. J. Laws of 1931, sec. 21.

tribunal whose proceeding is under review. It may act "by depositions taken on notice, or in such other manner as is according to the practice of the court"; and it "may reverse or affirm, in whole or in part, such tax or assessment".[12] Power to review the facts is conferred in New Jersey not only upon the Supreme Court but also upon its highest appellate tribunal—the Court of Errors and Appeals. Power, upon enquiry into the facts, to take evidence additional to that introduced before the tribunal whose action is under review is a power not uncommonly possessed by appellate courts in proceedings strictly judicial. The power to "reverse or affirm, in whole or in part" does not imply that the court may exercise administrative discretion. Such power is a common incident of the judicial review of taxation. As the administrative proceeding of assessing the tax had ended when the Supreme Court granted its writ of certiorari, we have no occasion, in this connection, to enquire whether it had not already ended when the appeal to the Prerogative Court was allowed.

Third. The plaintiffs contend that even if the action of the Supreme Court was judicial, the federal court had jurisdiction of this controversy because the judgment of the New Jersey courts was limited to a review of the assessment; that in order to collect the tax—to translate the assessment into an enforceable judgment—the state officials must institute a new and independent action, namely either an action for debt in the name of the State or a statutory proceeding against the persons interested in the estate; and that since no such action or proceeding had been taken at the time when these suits were filed, there is here no application to "stay proceedings in any court of" New Jersey. That is, the plaintiffs contend that the determination of the amount and validity of the tax is to be treated as an isolated and distinct proceeding, not as a step in the process of determining and collecting the tax imposed.

It is true that if the executors fail to pay the tax adjudged to be due, New Jersey must take further proceeding to compel the executors to discharge their obligation. This is so even if the ex-

[12] See State v. Justices of Middlesex, 1 N. J. Law 244, 248; Royal Mfg. Co. v. Rahway, 75 N. J. Law 416; Dubelbeiss v. West Hoboken, 82 N. J. Law 683, 686; Trenton & Mercer County Traction Corp. v. Mercer County Board of Taxation, 92 N. J. Law 398; Gibbs v. State Board of Taxes, etc., 101 N. J. Law 371; Kearny v. State Board of Taxes, etc., 103 N. J. Law 26, 27.

ecutors do not avail themselves of their existing right to appeal to the Court of Errors and Appeals, or if upon such appeal that court affirms the judgment of the Supreme Court. But it is not true that such further proceeding would be, in legal contemplation, independent action. Upon dismissal of the certiorari, the cause was remanded to the Prerogative Court. By the appeal of the executors, it had acquired jurisdiction not only to determine the tax due, but to take appropriate proceedings for its collection. Its jurisdiction continues until its decree is satisfied.

The further proceedings required to compel satisfaction of the decree establishing liability for the tax do not differ in essence from those required to satisfy any judgment for a debt recovered at law or any decree in chancery for the payment of money. The procedure of the Prerogative Court subsequent to a decree follows that of the equity courts, which had, ordinarily, no power to enforce their decrees except by citation for contempt.[13] Chapter 148 of the laws of 1900, which provides, as a means of collection, that the Prerogative Court shall issue a citation if it appears that a tax found to be due has not been paid, is declaratory of the existing procedure.[14] Section 21 of the Transfer Inheritance Tax Act provides that the lien created by docketing a decree "shall have the same effect as a lien by judgment, and execution shall issue thereon according to the rules and practice appertaining to other judgments."[15]

Fourth. The prohibition of Section 265 is against a stay of "proceedings in any court of a State." That term is comprehensive. It includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final

[13] See 2 Daniell, Chancery Pleading & Practice (6th Am. ed., 1894) 1042 *et seq.*

[14] N. J. Laws of 1900, sec. 7, p. 347: "If any person shall neglect or refuse to obey any citation, or to perform any sentence or decree of the ordinary or judge of the prerogative court, it shall be lawful for such ordinary and such court to cause such person or persons, by process directed to any sheriff of any county of this state, to be taken and imprisoned until he shall obey the said citation, or perform the said sentence or decree; and every sheriff is hereby directed to cause all such process, to him at any time directed, to be duly executed, and to confine the person against whom such process shall be issued, as in execution, until he shall be delivered by due course of law; and if any sheriff shall neglect his duty therein, he shall be answerable to the party aggrieved in such manner as he would be answerable upon process of the like nature issuing out of the supreme court." Imprisonment and realization upon the tax lien are means provided for enforcing also other New Jersey taxes. See Laws of 1918, sec. 606, p. 874; McLean *v.* Delaware, Lackawanna & Western Coal Co., 13 N. J. Misc. Rep. 83, 84; see note 10.

[15] See note 11.

process.[16] It applies to appellate as well as to original proceedings; and is independent of the doctrine of *res judicata*. It applies alike to action by the court and by its ministerial officers; applies not only to an execution issued on a judgment,[17] but to any proceeding supplemental or ancillary taken with a view to making the suit or judgment effective.[18] The prohibition is applicable whether such supplementary or ancillary proceeding is taken in the court which rendered the judgment or in some other. And it governs a privy to the state court proceeding—like Elinor Dorrance Hill—as well as the parties of record. Thus, the prohibition applies whatever the nature of the proceeding, unless the case presents facts which bring it within one of the recognized exceptions to Section 265.[19] It is not suggested that there is a basis here for any such exception.

The conclusion reached by the lower court is consistent with *City Bank Farmers Trust Company* v. *Schnader*, 291 U. S. 24; and with all the other decisions of this Court distinguishing administrative from judicial proceedings to which the plaintiffs have called our attention; with the cases which hold that this Court lacks jurisdiction where the review sought is legislative or administrative in character; with those which hold that the lower court lacked jurisdiction because the plaintiff had not exhausted his administrative remedies; and with those which hold that the assessment of taxes is not an order within the meaning of Section 266 of the Judicial Code.[20]

Affirmed.

Mr. Justice STONE took no part in the consideration or decision of this case.

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[16] Compare Hyattsville Building Ass'n v. Bouic, 44 App. D. C. 408, 413; United States v. Collins, 25 Fed. Cas. 14,834, p. 544;

[17] Compare In re Chetwood, 165 U. S. 443, 460; Charles Warren, "Federal and State Court Interference", 43 Harv. Law Review 345, 366-78.

[17] Ruggles v. Simonton, 20 Fed. Cas. 12,120, p. 1327; Leathe v. Thomas, 97 Fed. 136; Ke-Sun Oil Co. v. Hamilton, 61 F. (2d) 215.

[18] Mutual Reserve Fund Life Ass'n v. Phelps, 190 U. S. 147, 159; American Ass'n v. Hurst, 59 Fed. 1, 5; American Shipbuilding Co. v. Whitney, 190 Fed. 109.

[19] Compare Wells Fargo & Co. v. Taylor, 254 U. S. 175, 182-184; Essanay Film Co. v. Kane, 258 U. S. 358, 361; Riehle v. Margolis, 279 U. S. 218, 223.

[20] See, e. g., Prentis v. Atlantic Coast Line, 211 U. S. 210; Keller v. Potomac Electric Co., 261 U. S. 428; Ex parte Williams, 277 U. S. 267, 271-2.